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The Grand Trunk Railway Company of Canada.

PROCEEDINGS
OF THE
PREFERENCE BONDHOLDERS.

HISTORICALLY, LEGALLY, AND FINANCIALLY CONSIDERED;

WITH A CONCISE REVIEW OF THE POSITION OF ALL
PARTIES IN CONNECTION WITH THE PRESENT
EMBARRASMENTS OF THE COMPANY.

BY
RICHARD SNELLING,
STUDENT-AT-LAW.

"NAM PRIMUM OPUS EST CONSULTO; ET UBI CONSULTUM, OPUS EST MATURE FACTO."

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PREFACE.

To the Preference Bondholders of the Grand Trunk Railway Company of Canada :

Bacon said, " It is generally better to deal by 'speech than by letter," and I should much have preferred adopting this course, had circumstances permitted my attending those meetings in England which have been convened to discuss the important questions which so much affect your interests in this undertaking. Having, however, felt it incumbent upon me to come before you, I have decided to do so in writing, rather than not at all.

In indicating a policy for the Preference Bondholders, in the autumn of 1860, and thence until a very recent date, I had received for it the approbation of those who were actively engaged in asserting and protecting their rights ; and in conducting the legal proceedings referred to in the following pages, I had also received unequivocal assurances of satisfaction.

No one will deny that the litigating Bondholders had a right to file their bill for the purposes before mentioned, and to press their suit. Their position in this particular is indefensible. During the progress of this litigation, none but the Defendants, the Judgment Creditors, and the Company and their respective friends, have questioned the policy of this proceeding.

At the meeting of the 24th December, 1861, when all parties determined to unite their endeavours to obtain Government relief for the road, the proceedings in the suit were, in consequence of this arrangement, stayed ; and that meeting decided " that the Government and Legislature of Canada should be impressed with the importance of prompt action in

dealing with the question of the Postal Subsidy and its Capitalization, as *the only practical means* of relieving this concern from its financial embarrassments."

As this is the most recent official indication of the policy to be pursued, I assume that the Preference Bondholders have been convinced of its entire practicability in thus committing themselves to it as the *only* alternative.

I have assumed that a Capitalization scheme cannot pass the Legislature of this Province. I have shewn that if it did --the Preference Bondholders would in nowise be benefitted by its passage.

The legal proceedings in Canada having been stayed, I have prepared this *brochure* upon a subject of great Provincial importance ; and now submit it, with the simple statement, that its publication is made solely by myself, without anthorization from, or prejudice to, the litigating parties.

I have embraced this opportunity to give a concise history of the "case" of the Preference Bondholders, as evidenced by the proceedings and meetings here and at home since October, 1860.

RICHARD SNELLING.

Toronto, 24th February, 1862.

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Grand Trunk Railway Company of Canada.

INTRODUCTION.

THE Report of the London Directors of the Grand Trunk Railway Company, issued on the 26th October, 1860—first originated the discussion between the various classes interested in the Railway, and particularly between the Preference Bondholders on the one hand, and the Judgment Creditors on the other, as to the order of priority in which their respective claims were enforceable against the revenue, lands, plant and rolling stock of the Railway. In this Report an announcement was made which alarmed the Preference Bondholders. It was as follows :—

“ In the present embarrassed state of the Company's affairs, and the uncertainty of relief from the Government; adequate to meet its liabilities, Messrs. Baring Brothers and Co., and Messrs. Glyn, Mills and Co., *have obtained* a Judgment against the Company for debts due to them and others whom they represent, *which vests in their agents the power of seizure of the rolling stock of the road*, but this measure has been adopted for the general benefit of all *present* creditors, to guard against hostile prosecution of individual claims, and for the protection of the Company's interests.”

Immediately after the issue of the Report of the 26th October, 1860, a meeting of First Preference Bondholders was convened, and on the 2nd November, 1860, they resolved—

- “ 1st, That a Committee be appointed to consider the circumstances and conditions of the First Preference Bondholders, and to take immediate and active measures for the protection of their interests.
- “ 2nd, That it appears to this meeting that the interests of the Preference Bondholders are so nearly identical with the general interests of the proprietors, that the Committee ought to be prepared to co-operate with the other interests in the undertaking.”

On the 17th December, 1860, the Committee appointed by the said resolutions presented their Report, to which (except in so far as it deals with the question of the Judgments which had been obtained by Messrs. Baring and Glyn) it is unnecessary to make further reference. I therefore extract the following :—

- “ In the personal communications which have taken place between the Committee and the London Directors, the subject of this Judgment has been specially referred to, and the London Directors have reiterated to the Committee the statement just quoted from the Report of the 26th October last, adding, however, *that they do not consider the First Preference Bondholders as present creditors.*
- “ The London Directors (including Mr. Baring and Mr. Glyn) have personally assured the Committee that the Judgment is not intended to be used in any manner hostile to the general interests of the claimants on the line, that it is specially designed to prevent effectually any interruption to the working of the line, *which might by possibility be occasioned by the vindictive measures on the part of small local creditors*; and that as far as can be ascertained, the Judgment will be entirely efficacious for these ends.
- “ The Judgments obtained are for advances and other ordinary contract debts, and the London Directors describe the measure to confer a legal power to seize the rolling stock of the line.”

As to the legal remedies for overdue interest and principal, this Committee reported : “ As to the remedy for overdue interest, they (the First Preference Bondholders) will be entitled to apply to the Courts in Canada to appoint a Receiver over the line empowered to pay as far as possible the interest on the First Preference Bonds after first defraying the necessary working charges of the concern.”

- “ The remedy of the First Preference Bondholders for the *Principal* amount of the Bonds themselves, it may be pretty safely assumed would not be legally available till the due date of the Bonds in December, 1881, *and that remedy would then be against the lands and buildings of the Company.*”

The views entertained by this Committee, as to the rights of the First Preference Bondholders, were evidently opposed to a correct appreciation of their true position, and were evidently expressed in the interest of other claimants—*then* and *now* deeply interested in the undertaking—the Judgment

Creditors, Messrs. Baring & Co., and Messrs. Glyn & Co. This Committee were aware at the time of the compilation of their report, that it would not find favor with the majority. The following statement in the report, from which I quote, confirms this view :—

“They have to state, however, that other First Preference Bondholders, acting independently of the Committee, have already taken the opinions of eminent counsel as regards the rights of First Preference Bondholders, and the remedies available. These parties have also forwarded instructions to Canada, with a view to an early assertion of their rights before the proper Court.”

This latter statement presents my first identification with, and engagement on behalf of the interests of the First Preference Bondholders. At the period referred to, I was instructed by Messrs. Ashurst, Son & Morris to take the necessary proceedings on the part of the First Preference Bondholders referred to in the before-mentioned Report, for the purpose of having their rights settled and determined.

It had been advised by eminent counsel at home, and their opinion had been concurred in by eminent counsel practising on the Equity side of the Upper Canadian Bar ;

That the Preference Bondholders were entitled to a charge of the same nature and extent as that which the Province formerly had.

That the lien of the Province extended to the rolling stock and plant, and that consequently the charge created in favour of the First Preference Bondholders by the act of 1856, also comprised the same property.

That as default had been made in the payment of interest on such Bonds, the holders thereof were entitled to have a Receiver and Manager appointed, and also to have the Judgment Creditors restrained by injunction from seizing the rolling stock or plant under their executions.

In effect that they were in the position of First Mortgagees on all the property of the Company, including the rolling stock, and therefore that no Judgments against the Company could be enforced except subject to the prior claims of the Bondholders.

CASE OF THE PREFERENCE BONDHOLDERS.

The “Case” of the Preference Bondholders has already been very fully discussed, and in one section of this Province adjudicated upon ; still, to render myself intelligible, I may properly refer to a very able exposition of their position and rights, as

issued by Messrs. Ashurst, Son & Morris, on the 7th February, 1861, and from this *brochure* I make the following quotations :

"So much misconception prevails as to the rights of the Preference Bondholders, and as to the effect of the exercise of those rights on the general interests of the Railway, that it is deemed desirable, for the information of all classes interested, to give an outline of the case, *and of the course intended to be pursued in asserting the rights of the Preference Bondholders, as first incumbrancers, against the claim set up by Judgment Creditors to seize the rolling stock and plant.*

"Prior to the year 1856, the Province of Canada had advanced to this railway £3,111,500 ; for which it had, by the several Acts constituting the Company, a first lien or charge on the Railway and property of the Company.

"In 1856 the Company, being unable to raise the further capital required to proceed with the works, applied to the Government of Canada for aid ; and as the result of negotiation between the Company and the Government the Relief Act of 1856 was passed, under which the First Preference Bonds were issued.

"That Act provides as follows :—

"'For the purpose of enabling the Grand Trunk Railway Company of Canada to complete their undertaking, the Governor in Council shall be and is hereby authorized to carry into effect the arrangement provisionally entered into between the Government of Canada and the said Company, based upon the following terms, viz. :—

'The said Company shall be authorized to issue preferential bonds to the extent of Two Millions of Pounds sterling. The holders of such bonds to have priority of claim therefor over the present first lien of the province.

"The proceeds of the said bonds shall be deposited with the provincial agents in London, and released to the Company on the certificates of the Receiver General, upon proof, to the satisfaction of the Governor in Council, of progress of the several works herein-after mentioned.'

"Shortly after the passing of this Act, subscriptions were solicited towards the First Preference Bonds in a circular signed by the Secretary of the Company, and dated the 9th of December, 1856, in which it was stated that 'the holders of such Bonds are to have a *priority of claim over the present first lien of the*

Province. In the same circular, the Act of 1856 was described as a *concession by the Government of 'the first charge on the undertaking, amounting to upwards of three millions sterling.'* The last paragraph of the circular is in these words:—*'It has been before mentioned that these Debentures are to have priority of claim over the present first lien of the Province, and THERE CANNOT, THEREFORE, BE ANY DOUBT AS TO THEIR SECURITY AND VALUE AS AN INVESTMENT.'*

"In 1858, a further Relief Act was passed,* under which the Second Preference Bonds were issued for £1,111,500, being the balance of the Province's lien beyond the two millions First Preference Bonds.

"In a circular, dated 3rd March, 1859, signed *by all the London Directors*, and soliciting subscriptions for the Second Preference Bonds, the following statement appears:—*'The sum of £3,111,500 has been raised on Bonds of the Province of Canada, the interest on which formed the first claim on the Railroad.'* In the same circular the Directors state that *'the proposed new issue of £1,111,500 of Second*

* That of 22 Vic. ch. 52, by which the Company was authorized to increase its capital, and whereby it was enacted that the further capital so authorized might be raised by Preferential Bonds, which should be deemed to be Preferential Bonds within the meaning of the said Act of the 19th and 20th years of Her Majesty's reign, c. 111, and that such bonds, together with the Preferential Bonds already issued under the authority of the said Act, should be entitled to the privileges conferred on Preferential Bonds by the said Act; or that such increase of capital might be effected by bonds not preferential, or by mortgage, or by the issue of new shares; and it was thereby further enacted that, subject to the rights and powers of the Atlantic and St. Lawrence Railroad Company under a certain lease, as to the portion of the undertaking thereby demised, the earnings of the Grand Trunk Railway Company of Canada, after deduction of working expenses, should in each half year be appropriated and applied as follows:—First, in and towards the payment of the interest upon the amount which for the time being should have been raised by the issue of Preferential Bonds as therein and hereinbefore mentioned; Secondly, in and towards payment of the interest upon the loan capital of the Company, for the time being raised and subsisting upon and in respect of the several classes of its bonds and debentures other than the said Preferential Bonds; and Thirdly, in and towards payment of a dividend at the rate of 6 per cent. per annum on the stock and shares of the Company; and after payment of such dividend, then in or towards the payment of the interest on the Provincial Debentures, issued in aid of the Company from time to time to the extent of £3,111,500 sterling in all; and after payment of such interest, the surplus, if any, should be applied in payment of a further dividend upon the stock and shares of the Company.

Under the last mentioned Act, Second Preferential Bonds have been issued for £1,111,500 sterling, being the residue of the amount of the provincial lien, after deducting that of the First Preferential Bonds; but such Second Preferential Bonds have not even yet been all taken up, nor has the Company adequately increased its capital in any of the methods prescribed by the last-mentioned Act, but has incurred heavy debts, called floating debts, for the completion and equipment of its railway, and for other purposes which should have been provided for out of capital, and were by no means chargeable against earnings.

Preference Debentures will, with the £2,000,000 of First Preference already issued, *assume the position originally occupied by the Provincial Debentures of £3,111,500.* It has been repeatedly asserted by the Directors, and it is borne out by the Acts, that the Province, prior to the Act of 1856, were *first mortgagees*, and had the *first claim on the receipts of the line*. These, then, are the rights which the Preference Bondholders took when they assumed the position of the Province.

“Previous to the issuing of the Report of the Directors, dated 26th October, 1860, no one doubted that the Preference Bonds, as had been always represented, and as their name implied, conferred on the holders a *first charge*; and so late as April, 1860, subscriptions were solicited for the Second Preference Bonds, on a representation that a certain amount of gross traffic would, after deducting working expenses, leave sufficient to *pay the interest on the First and Second Preference Debentures*, showing clearly that, *at that time*, it was not supposed that *unsecured* creditors could, by obtaining judgments, interfere with the rights so repeatedly asserted to be possessed by the *secured* creditors.”

Messrs. Ashurst, Son & Morris had reasonably hoped that the litigation into which the Preference Bondholders had embarked would not be a protracted one—and I make the following extract from their “case” with a view of further reference to the subject hereafter :—

“As regards the time it will take, *much will depend on the character of the opposition*; but remembering *who are the principal Judgment Creditors*, and the large interests involved, it is assumed that no difficulty will be thrown in the way of a speedy decision.”

I have one other quotation to make on the subject of the litigation, which is as follows :—

“The Grand Trunk is not yet a wreck, and, whoever else may abandon it, *the Preference Bondholders do not intend to do so, as the proceedings they are now taking sufficiently indicate.*”

INSTITUTION OF SUIT IN CANADA.

The litigation was fairly embarked upon on the 3rd January, 1861, and a Bill was filed in the Court of Chancery at Toronto, against the Grand Trunk Railway Company of Canada, the Judgment Creditors, (Messrs. Baring and Co.,

and Messrs. Glyn and Co.), and Her Majesty's Attorney General for Upper Canada, as representing the interests of the Crown in respect of its lien.

The Plaintiff's Bill of Complaint,—after stating the various Acts of the Provincial Parliament upon which their first charge depended, and which may be referred to as follows :

12 Vic. ch. 29.....	1849
14 and 15 Vic. ch. 73.....	1851
“ “ “ 51.....	1851
16 Vic. ch. 37	1852
“ “ 39	1852
18 Vic. ch. 33.....	1854
“ “ 174	1855
19 and 20 Vic. ch. 111	1856
20 Vic. ch. 11.....	1857
22 Vic. ch. 52.....	1858

The charge as to *Interest*, being created by the act of 1849 ; that as to *Principal*, by the act of 1851 ; the Railway being incorporated by the act of 1852 ; the amalgamation of the various lines by the act of 1854 ; the loan of £900,000, by the act of 1855 ; the first Preference Bonds being created by the act of 1856,—concluded with the allegations following :

- “ The receipts and earnings of the said Railway Company, as the same is at present managed, are not sufficient to pay the expenses incurred in working the said Railway and incidental thereto, and there is no fund available to the said Railway Company, out of which to pay the overdue interest on the said Preferential Bonds.
- “ The Plaintiff charges that the said Preferential Bonds constitute a charge or lien, not only upon the said Railway and the profits and tolls thereof, and the lands and real Estate of the said Company, but also upon the Engines, Carriages and other Rolling Stock, and upon the Plant and all the other tangible personal property of the said Railway Company.
- “ The security of the holders of the said Preferential Bonds would be greatly impaired if the said Defendants having the aforesaid Judgments were to sell the Rolling Stock and Plant of the said Company under the said Executions, inasmuch as the said Preferential Bondholders would then have no means of making the said Railway available to satisfy their claims by working the same through the intervention of a Receiver and Manager, and the property on which such holders depend as security for the payment of

their claims would be diminished, not merely in the marketable value of the said Rolling Stock, which is worth about One Million pounds—but by the breaking up of the Traffic on the said Railway, which it would be impossible to restore for a considerable time, or without an expenditure of several Millions of dollars.

“ The plaintiff charges that the holders of the first Preferential Bonds are entitled to priority in respect of their first charge or lien, upon the said Railway, its Tolls and Profits, and upon the Rolling Stock and Plant, and all the other property, real and personal of the said Railway Company, over the respective charges and liens of the Provincial Government and of the said Execution Creditors.

“ The plaintiff also charges that the said first Preferential Bondholders are entitled to have a Receiver and Manager of the said Railway appointed, by whom the said Line of Railway may be worked for the benefit of the respective classes of lienholders therein, in their proper order of priority.”

And also with the following prayer:—

- “ 1. That the Plaintiff and the said other, the said first Preferential Bondholders may be declared entitled to a first charge or lien in respect of their said securities upon the said Railway, and the Tolls, Profits and Revenue thereof, and upon the Engines, Carriages, Rolling Stock and Plant of the said Company, and upon all the real and personal property of the said Company.
- “ 2. That a proper person may be appointed as Receiver and Manager of the said Railway, by whom the traffic thereof may be carried on, and that the profits derived from such traffic may be applied in the satisfaction of the overdue interest and other debts and demands of the said several classes of Creditors in their proper order of priority.
- “ 3. That the said defendants, Messrs. Baring and Co., and Messrs. Glyn and Co., may be restrained by the Order and Injunction of this Honorable Court from seizing, selling or in any way interfering with any of the Engines, Carriages, Rolling Stock or Plant of the said Railway Company.”

The Bill was served on all parties.

This was the position of matters in Canada in the early part of January, 1861, and the suit was *in statu quo*, until the answers of the Judgment Creditors and the Company were

filed, the former on the 5th April, 1861, and the latter on the 24th April, 1861.

In England, however, much was going on during this period.

PROCEEDINGS IN ENGLAND.—JAN. 1861.

On the 2nd January, 1861, an important Meeting, convened by the London Directors, was held (a full report of which has already appeared.)

The Committee of Preference Bondholders in their report of the 17th December, 1860, from which I have already quoted—in discussing the “Policy to be at present adopted,” state as follows :

“The great object to be now accomplished, is the raising of two or two and a half millions sterling, for the purpose of liquidating present debts and placing the line in an efficient condition for meeting the requirements of the traffic.

“The Committee feel strongly *that the Grand Trunk Company has a right to look to the Canadian Government for aid in this extreme difficulty*, a right founded upon a fair and reasonable interpretation of the conditions and circumstances under which ten millions of English capital have been spent in conferring upon Canada the best and most perfect system of Railway transit to be found in North America.”

The original prospectus was issued in 1853, and the report proceeds as follows :—

“In the several applications which, since 1853, have been made by the Company, to the Canadian Government, for facilities and for aid in prosecuting the works, the *moral responsibility of the Province* to the undertaking has been uniformly urged as the basis of these applications, and that moral responsibility has been in effect admitted by the *language of the public acts*, under which assistance has been rendered to the Company.

“*The Committee are quite prepared to find that errors and extravagance may be detected in some portions of the policy pursued in the construction of the line.*”

The result of the meeting of the 2nd January, 1861, as will be gathered from the printed Report of the proceedings thereat was :—

That a Select Committee of seven persons, viz. : 2 First Preference Bondholders ; 1 Second Preference Bondholder ; 2 Ordi-

nary Bondholders and 2 Shareholders, was appointed to confer with the Directors.

That Committee was composed of the following gentlemen :

R. W. Crawford, M.P., Chairman.

William Newmarch, London, (Chairman of former Committee of Preference Bondholders.)

Samuel T. Arnold, Liverpool.

William Evans, Manchester.

William Hartridge, London, (Member of former Committee of Preference Bondholders.)

William Smith, London, (Member of former Committee of Preference Bondholders.)

Henry Wheeler, London.

And it was referred to this Committee to consider a scheme which had been proposed for equipping the line with plant and rolling stock and for extricating the Company from its present financial difficulties, and to report thereon and on any amended or substituted scheme which they might advise, at the earliest period.

On the 6th February, 1861, the first report of this Committee was put forth to the public.

This Committee did not consider it prudent to entertain the proposed scheme, and advised "that the Share and Bondholders should await intelligence of the course taken by the Canadian Government and Parliament." They also adopted the conclusion that "the best and most effective means of advancing the claim of the Grand Trunk Company upon the consideration of the Canadian Government and Houses of Assembly, will be by means of a Petition to be sent by the Share and Bondholders, praying generally for relief and assistance in the present embarrassments of the Line."

The Preference Bondholders, who had commenced legal proceedings, appear to have had very little faith (and very rightly so) in the ultimate success of this course. I again refer to the "Case," and I quote therefrom as follows :—

"In the present embarrassed state of the Company's affairs, the Directors have applied to the Government of Canada for further aid, and we have been asked to suspend proceedings until the result of that appeal shall be known.

"We cannot advise the Preference Bondholders to delay proceedings on the *chance* of what the Government of Canada may do.

"The Preference Bondholders, if rightly advised, have already a first charge over everything. They, therefore, *can gain nothing* by legislation ; while the Judgment Creditors, on the other hand, have *every-*

thing to gain and nothing to lose by legislative interference. The Government of Canada are pledged to introduce *some measure* as to the Grand Trunk in the coming Session; it has been openly suggested (*although we do not believe that the suggestion will or can be adopted*), that the Government should advance the two millions and a half sterling, which is said to be wanted to pay off the floating debt and provide additional rolling stock, and *take a first charge for it.*"

The Committee of Share and Bondholders supplemented to their Report various "reasons" in support of their Petition applying for aid to the Canadian Parliament, and rested their appeal thereto on six principal grounds:

- "First, On the circumstances connected with the introduction of the Grand Trunk scheme into the English money market early in 1853.
- "Second, On the declared policy of the Legislature of Canada on the subject of Railways for several years prior to the Prospectus of 1853.
- "Third, On the apportionment of nearly two-thirds of the total aid granted by the Province to the construction of Lines, which at present, and for several years to come, are, and must be, wholly *non-commercial* in their character, that is to say, that while desirable as public works for the benefit of Canada, are indefensible as mercantile investments for purposes of dividend.
- "Fourth, On the obligations to aid—which have been admitted by the Province in the course of discussions which have taken place during the last four years.
- "Fifth, On the benefits which have been conferred by the *Grand Trunk System* on the Province.
- "And Sixth, On the considerations of general policy touching the future progress of Canada as inseparable from the financial credit of the Grand Trunk Railway Company."

These reasons are elaborated through almost twenty pages of printed matter, which concludes the report, and which will be more particularly discussed, in so far as they affect the present position of affairs, hereafter.

The Scheme of arrangement which had been prepared for the consideration of the different classes interested in this Railway, and which this Committee declined to entertain, was as it states "*specially framed, so as to avoid as far as possible asking the Government of Canada for any assistance except that based upon consideration of proper security and the interest*

of the Province, closely identified as such interests are with the proper development and prosperity of this Railway, to say nothing of the interest which the Province has in the Road in respect of its own debt, or the importance to Canadian credit generally that this concern shall be put upon a healthy footing."

The heads of such Scheme of Arrangement were as follows:—

- " 1. That the Government of Canada be applied to for an advance of a sum not exceeding £500,000, specially and solely for the purpose of providing additional Rolling Stock and plant, to be secured by a *perpetual first rent-charge* on the Railway after the rate of 5 per cent. per annum on the amount advanced, and that means be taken to secure the proper and economical application of such advance to the purpose for which it is intended.
- " 2. That the Government of Canada be applied to for an increase to the present postal subsidy, and that the amount of any such increase be capitalised for the benefit of the floating debt creditors who shall agree, if by such means a million sterling can be raised, to accept such a Dividend as that amount will pay on their debts, and to rank for the balance with interest after all the existing Bond Creditors of every class.
- " 3. In order to protect the Road and the property of the Company *from seizure at any time hereafter* by hostile creditors, and to ensure the application of the net earnings from time to time in payment of the different classes according to their legal priorities, a *permanent Receiver* shall be appointed in the suit instituted by a Preference Bondholder in Canada, who shall continue until the net proceeds of the Line shall be sufficient to meet the annual interest on the whole Bonded debt of the Company. The title of the Receiver to be confirmed and his duties defined by Act of Parliament; two provisions being essential—viz:—1st. That the Receiver remit the *net receipts* periodically to the Bankers in England, unless impounded by order of the Canadian Courts to satisfy the claims of parties residing in Canada. 2nd. That all claimants against the Company be restrained from proceeding at law, but shall have in lieu thereof a summary mode of applying to the Court in Canada to settle (subject to an appeal) their legal priorities in accordance with the existing acts, and that the net receipts be from time to time applied in accordance with such priorities.
- " 4. That inasmuch as clauses 1 and 2 affect the claim of the Preference Bondholders to a first charge on the earn-

ings, a meeting shall forthwith be held in London of the Preference Bondholders, to consider this proposed arrangement, of which due notice shall be given, and if, notwithstanding the approval of such meeting, one-fourth in value of the Preference Bondholders shall within 10 days after the date of such Meeting join in dissenting from the proposed arrangement, such dissent shall negative the same. That as an inducement to the Preference Bondholders to assent, their claims, as defined by the joint opinion of Sir Hugh Cairns, Mr. Amphlet, Q. C. and Mr. Westlake, shall be confirmed to them by Act of Parliament.

- " 5. This arrangement to be without prejudice to the legal rights of any Judgment Creditor who may object to accept the provisions of clause 2 in satisfaction of his debt, but a limited time to be fixed within which all creditors shall determine whether they will accept such provision or not, and those only to be entitled to the benefit of it who accept it within that time.
- " 6. An Arrangement Act to be prepared for the purpose of giving effect to this arrangement, and to contain, in addition, provisions, (1) *Empowering the Company with the consent of the Governor in Council to stop up or lease all non-paying portions of the line.* (2) *To give up or make fresh arrangements with reference to the leased lines, if the same should be found not to pay the rents* (3) *To give effect to the recommendation of the intended commission as to the working arrangements of the line, in order to its best adaptation as a paying commercial concern.* (4) *To make such alterations in the constitution of the Company as will be fair and just to the British Capitalists who have invested their money in the undertaking, and as will secure to all classes interested a proper voice in the management.*
- " 7. Inasmuch as the supply of proper Rolling Stock and Plant, and an arrangement with the floating debt creditors cannot be postponed without giving rise to fresh complications and embarrassments, the Government of Canada be urged at once to bring forward a measure of relief, and to press the same upon Parliament without waiting for the Report of the English Commission as to the future working arrangements of the Line, which are quite separate and distinct from its financial embarrassments, and without an arrangement of the latter no re-organisation for the working of the Line can be effective.
- " 8. That these Heads be circulated amongst the different

classes interested and then be further considered at an adjourned Meeting to be held at the London, on the day of January now instant, so that the same may, if then approved of, be sent out for the consideration of the Government of Canada prior to the meeting of the Canadian Parliament in February."

The "reasons" in favour of the proposed arrangement scheme were shortly stated as follows :

- "1. The government are in a position of difficulty. They must either (1) grant the Company the *full* relief it requires or (2) do nothing. The former they *can't* do if they would. After a good deal of time lost it will end therefore in their doing nothing, unless some middle course can be suggested. The full relief which the Company wants to pay off all it owes, and stand a fair chance of keeping out of debt for the future, is not limited to Two millions and a half. Some provision would have to be made for the large annual charge for interest on debt which the net proceeds clearly will not be sufficient to meet for at least some time to come.
- "2. Anything in the nature of an arrangement must emanate from the parties interested. No scheme which may be put forward simply as a Government measure would stand a fair chance, so strong is party feeling in Canada ; and having been in Canada recently, I am bound to say, that amongst all classes with whom I conversed, many of whom were very competent to form an opinion, the strongest prejudice exists against the Grand Trunk, under its present management, and I am quite sure that it will require to present the scheme in a practical business-like form to get the people of Canada to listen to *any* measure of relief. If it be conceded that the scheme should emanate from this side, then the question is, whether the parties interested can better bring it forward *now*, or after an abortive attempt by the Government to do something? Could the Government then so well take up a scheme, involving even a limited amount of relief, as they could do now? Would not the Government then be all but powerless?
- "3. An arrangement scheme emanating from the parties interested in England would be regarded as *their* scheme; the people would look favourably on a scheme which secured them, (1) The Railway free from any chance of future embarrassments, and (2)

The Province from being called upon for any further aid,—and which further promised to give the Province security for the limited aid now asked.

- “4. Suppose the Company could raise enough to equip the road, what is there to prevent its afterwards making its own terms with the Government for carrying the Mails? Would not the Province have then to pay quite as much as is now asked? Of course the Company must bind itself to carry the Mails for a certain number of years at the rate now to be agreed on. If therefore the province do not *at once* get the full benefit of the advance, regarded merely as a Postal bargain, they will do so before long; but there are collateral advantages which more than counter-balance any present loss which the Province may sustain in respect of the interest on the million.
- “5. As to the £500,000 for the rolling Stock, the Province will get full security for the interest on it. The Company might raise this elsewhere on the same security. It could not at present be raised in England, but contractors might be found who would undertake to stock the Road and take payment in such a security as is here proposed; but this would involve a sacrifice in (1) A higher rate of interest and (2) The Contractor making his own terms for what he supplies; whereas it is to the interest of all parties concerned, and the Province as well as the rest, that the Company should be able to borrow this money on *easy terms*, and that it should be economically applied, so as to give the road the full benefit of it.
6. The Canadians will see that it will be better for the Province to fall into the proposed arrangement than risk the complications and delay of litigation with the certainty that, except as part of an arrangement, the Railway cannot be properly equipped until the rights of the parties have been settled by the Courts, which will take a long time, and in the meantime the Province will suffer in common with the Railway. As to the “*condition*” in the Act of 1857, counsel is of opinion that it is not binding on the Preference Bondholders, and that consequently they may appropriate to themselves the net earnings of the line without being under the obligations which that condition imposes. The Province may therefore find after much delay, and the injury resulting therefrom, that it will be for the interest of the country to come forward and aid the Road.—They could not do so so well, nor on such easy terms at any future time, as they could now.

- "7. The Canadians must be impressed with the fact that it is impossible to raise further capital in England until the credit of the concern is restored. If therefore they will not aid the Company, the sooner the parties interested know it the better, in order that they may lose no time in having their rights settled by the Courts.
- "8. The floating debt creditors should consider (1) What they will get even if it should be held that they *are* entitled to the Rolling Stock? By the time the question is finally decided the floating debt will have increased immensely, (2) What they will get if Sir Hugh Cairns' opinion is upheld? By the proposed arrangement they will get 10s. down and Bonds which would certainly be worth at once 50 per cent for the balance; that is 15s. in the £. with the fair prospect of getting 20s., if the Road, properly organized and equipped, should earn enough to pay interest on its bonded Debt.
- "9. If the floating debt creditors have no confidence in getting aid to the extent of the million, then what use is it for them to rely, as they are at present doing, on the hope of not only getting the Two millions and a half, but such further aid as I have already shewn the Government must grant if they undertake to carry the Company "*through*"? If no aid can be obtained, why delay the proceedings for a settlement of the legal rights? The chance of getting the limited aid proposed will be much increased, if the floating debt creditors will join in pressing the matter on the Government. As to the Government undertaking all the responsibilities of this Company, or granting it any extended measure of relief, *it would not be desirable to accept it even if it could be obtained.* It would have the effect of placing the Road under Government control, which would not command the confidence of any class, either at home or in Canada, and would be utterly at variance with the working of this Line purely as a Commercial concern, which all now agree is the great desideratum.
- "10. Nothing would tend more to restore confidence in the concern than *first*, to clear it of its present indebtedness; and *next*, the appointment of a permanent Receiver, with large powers as suggested by the scheme. Such appointment would secure to the British capitalist a due and regular application of the net receipts, would prevent the possibility of the concern ever getting into fresh complications; because, however small might be the net earnings, they would

have to be applied according to the legal priorities; and instead of having class against class, as we have at present, each claimant would have a summary mode of settling any question as to priorities on applying to the Court in Canada under whose direction the Receiver will be acting.

- " 11. The only class who can, I think, object, are the Bond creditors whose Bonds mature at the earlier dates. They have an advantage at present which they may fancy the arrangement takes away from them, but this is so only *in appearance*. It is not so in *reality* and for this reason—It is clear, that *at present*, the Preference Bondholders and the Judgment Creditors, between them, cover the whole of the property of every kind. It is right therefore that they should stipulate for that property being protected from future seizure; but if the Bond Creditors whose Bonds become due in 1862 should then insist on their principal being repaid they can do so, only that they must take payment out of the surplus earnings instead of by seizure, assuming that the Company cannot then renew the Loan, which however they would doubtless be able to do if they could shew by that time sufficient net earnings to pay the interest; whereas if there be no arrangement, the 1862 Bond Creditors risk both principal and interest, for no one can say what may be the result, to the common property, of a lengthened litigation, and the Road in the meantime being left in Chancery, with no one having the duty or interest to equip it with proper Rolling Stock, &c., which all agree is so essential to its proper development. The Preference Bondholders will clearly have no interest to make out of it more than their interest, and it cannot be expected that they will give up any part of that for the purpose of equipping the Road for the benefit of those coming after them.

PROCEEDINGS IN QUEBEC.

The Committee appointed at the meeting of the 2nd Jan'y, 1861, having determined to rely upon relief from the Canadian Government, and acting in the full belief that Parliament would respond to their appeal, the Preference Bondholders who had commenced proceedings, decided upon prosecuting their suit with all possible despatch. They, however, sent an agent to this Province for the purpose of watching legislation on their behalf, and if possible to assist in the passing of a measure of relief founded upon the arrangement scheme already referred to.

I cannot better illustrate the position of matters at this period, than by quoting from a published letter addressed by the Agent of the Preference Bondholders, on the 17th April, 1861, to one of the Members of the Executive:—

“ I have been patiently waiting since my arrival here, to see the kind of measure, if any, which might be submitted to the Legislature, to relieve the Grand Trunk from its present very critical position. I know that great expectations were formed on the other side by the framers of the Petition to Parliament, that the Government and the Legislature would not let this Session pass without some relief in the premises. The Petition was, however, allowed to pass unnoticed, and yourself and two other Members of the Government informed me, that they could not if they would, extend any further pecuniary aid to the Company. Still, I was told that a Bill intended to affect the Railway in certain contingencies, was in preparation, and as I was kindly promised an early copy of that Bill, I thought it respectful and proper to wait and see its contents, before any measure was suggested by me on the part of the Preference Bondholders whom I represent.

“ As, however, your note of last evening informs me, that ‘ it is very doubtful what course the Government will pursue,’—as the Session, intended not to be a long one, is already far advanced; and as Grand Trunk affairs are daily becoming financially worse, and more complicated, and there is real danger of a stoppage of the road—it becomes a duty, the performance of which I feel I can no longer delay, to submit to the Government a Bill, the great leading features of which are:—

- “ 1. To preserve the property intact, by the appointment of a Receiver, pending the settlement of legal rights and priorities, which are in no way interfered with by the Bill.
- “ 2. To give enabling powers to raise, with consent of present Preference Bondholders, a *new Preferential Capital* to pay the Judgment Creditors—if the Courts shall decide that they have a first lien over any part of the property—instead of allowing the property to be seized and sold, and the line to be stopped.
- “ 3. To give enabling powers, also, to raise a further sum as *new Preferential Capital*—with consent as above—properly to equip the road, and give enlarged facilities for its development, under the present management, which the Bill does not propose to interfere with.

"You will see that by this measure, if adopted, the Preference Bondholders would be making a concession, which, I believe, they need not do, if they were disposed to press their extreme rights, regardless of those behind them; or were content to wait and let things drift as they may. Those whom I represent have, however, no such selfish policy. They are desirous of seeing a course adopted, which shall benefit all interests, and hence I venture to submit, without prejudice, according to instructions, the heads of a measure, which I am prepared to explain in detail. May I ask, therefore, that you will kindly lay this letter before your colleagues in the Government, and let me hear from you thereon?"

He ably describes the *then* condition of Grand Trunk affairs in the following words, also extracted from his published correspondence:—

- "1. The Grand Trunk Company is admittedly insolvent.
- "2. It has tried in vain to obtain pecuniary aid from the Province by memorial to the Government, and Petition to Parliament.
- "3. The Government has repeatedly declared its inability, if even it had the will, to make further advances.
- "4. Messrs. Baring & Glyn have obtained judgment for an unusually large sum; one of the Contractors has commenced proceedings for overdue Bills of Exchange to a large amount; and the Preference Bondholders are before the Courts to assert their rights and priorities. From the proceedings of these several parties the integrity of the property is menaced; but should *they* forbear for the moment to press their claims to the utmost limit of their legal rights, there are still—
- "5. Numerous simple contract creditors who will immediately commence suits against the Company, when they find this session pass over without an attempt on the part of any to come to the rescue; and who will unquestionably seize and sell the property.
- "6. The non-payment of the rent and interest due in respect of the lease of the Atlantic and St. Lawrence Company exposing this part of the property, with all its improvements and equipment, to be taken possession of at any hour, without notice, and the lease to be forfeited.
- "7. Whilst the concern is thus threatened from without, its vitality is endangered from within, and it may any day come to a stand from sheer inanition. The very

wages of labour run into arrear, a laxity of discipline is thereby induced, threatening a complete disorganization of the staff; whilst from these causes and the bad material condition of the road, the traffic is carried on at an enormous risk to life and property."

The Government however, declined to interfere at the instance of the Preference Bondholders in any way whatever—they threatened to bring in a Bill, which would indirectly affect the Railway, by vesting in the executive the right of appointing a Receiver, and the agent before referred to, MR. WILL. PARE, accordingly served the notice, of which the following is a copy :

"[COPY.]

RUSSELL'S HOTEL,

Quebec, 4th May, 1861.

To the HON. GEORGE E. CARTIER,

Premier, &c., &c., &c.

"SIR—As agent of the first Preferential Bondholders of the Grand Trunk Railway, I beg to give you notice that they are—in the event of the management of the Railway by the Company not meeting the Statutory requirements imposed upon the Company by any Act of Parliament—prepared as parties primarily interested in the successful working of the Railway, to take the entire management and control of the undertaking into their own hands; and provide for the efficient working of the road, and the proper maintenance of the Postal service, the conveyance of Her Majesty's troops, and all traffic; and in all respects for the due performance of all obligations to the public.

(Signed,)

WILL. PARE."

The session was concluded without anything being done in regard to Grand Trunk legislation.

PROGRESS OF SUIT IN CANADA.

The suit thereupon proceeded; all attempts at legislation having failed.

The confidence entertained in England in the prospect of a speedy decision, was not realized. The English Solicitors, as I have already stated, expressed themselves upon this subject, "*that much would depend on the character of the opposition.*" They had hoped that "remembering who were the Principal Judgment Creditors," no impediment would be "thrown in the way of a speedy decision," but this was not the case; the defences put in by the Judgment Creditors and the Company were as *technical* as they well could be. So much was this felt by the Judgment Creditors that they instructed their Solicitors to withdraw one of such defences, viz., that "founded

on the non-execution of a mortgage or conveyance to trustees by the Company, to secure the Preference Bonds."

The defence set up by the Judgment Creditors, may be thus shortly stated :

"That the act of 1856, only authorised the Company to issue Bonds, with such priority of claim as therein mentioned, and even supposing the authority to create a charge prior to that of the Province, the only proper method of creating such a charge was by executing and registering a mortgage, and as that was not done, the conclusion is, that the Company succeeded in raising the money without putting in force the power to give a Preference with which it was armed by the act.

Then questions are raised as to the property covered by the charge, supposing it to exist.

Then questions are raised as to after-acquired plant, both simply and on the allegation that the Defendants advanced a part of their money for its purchase, and on an express contract for its security.

Then the question is raised that the Crown is a Trustee for the Plaintiffs of the rights which they claim, and that a Trust cannot be enforced against the Crown, by a Bill in equity, but only by Petition of Right.

Then the question of construction of the several acts, is contended for as against the plaintiff's rights.

The defence by the Company may be also shortly stated, as follows :

That the first Preference Bonds were not issued under the act of 1856, but under the act of 1857 (20 Vic., ch. 11,) and that these acts must be construed together.

That the Railway passes through five jurisdictions, and that a Receiver would be of no use and would be disastrous, and that no case is made for a Receiver.

Her Majesty's Attorney General has resisted the jurisdiction of the Court throughout the proceedings—and the course he has been advised to take with reference to this suit has been resistance throughout. The Bill was taken as confessed against him, from which decision he has appealed to the Court of Appeal.

The objections to the Plaintiff's rights, were on the whole, purely technical, (save and except the simple question of the construction of the various acts of Parliament.)

To question the extent or nature of the priority contemplated by the act of 1856, is one thing ; to contend that whatever the priority contemplated was, the Preferential Bondholders did not get it on account of a technical slip in carrying out the act, notwithstanding that the Bonds were issued under the act of 1856, is quite another thing ; especially when the Chief Directors who made the slip (if any,) are among the Defendant's who took the objection. It is attempted to throw blame

upon the Bondholders for not availing themselves of the provisions of the act. The Company issued the Bonds. The Directors made it appear on the face of the Bonds, that they were issued under the act of 1856, and who was to blame? Obviously *not* the Bondholders.

But it was unnecessary to *execute and register* a mortgage. The idea of registering each Bond separately in all the Counties in Canada through which the Railway passes is absurd, no machinery existed therefor; nothing is said in the act about mortgage—no land is described in the Bonds. The Acts of 1857 and 1858, by directing the payment of interest on the Preferential Bonds to be first paid, treat them (certainly by implication) as having been issued under the act of 1856.

The Act of 1856 gave the Preference Bondholders independent rights. They were put in the place of the Province. If the Crown was a Trustee as the Defendants contended—the Preference Bondholders were the *cestuis que Trust*. What would be the meaning of a *cestuis que trust* having priority of claim over his Trustee? The Crown does not admit the Trusteeship.

HERRICK v. THE GRAND TRUNK.

On the 17th June, 1860, a friendly proceeding was adopted, under the Title of "Herrick v. The Grand Trunk Railway Company," to determine the matters, which are better evidenced by reference to the prayer of the Plaintiff's Bill in that suit:—

- "1st. That it may be declared by this Honorable Court, that under the circumstances hereinbefore mentioned, the weekly and other earnings of the said road should be applied, after the payment of the ordinary and current expenses of managing, maintaining, and working the said road, in and towards the purchase and acquisition of such rolling stock, plant, stores, and other appliances, as may be requisite for the more efficient working of the said Railway, and in and towards the payment and discharge of the floating debt of the said Company, in preference to and before any payment in respect of the Preferential Bonds aforesaid, or the interest thereon, or any part of the funded debt of the said Company.
- "2nd. That the Defendants, the Directors of the said Company, may be restrained from any other application or appropriation of the said earnings.
- "3rd. That (if necessary) for the purposes aforesaid, all proper directions may be given, and accounts taken.

"4th. That the Plaintiff may have such further and other relief in the premises as the nature and circumstances of the case may require, and to this Honorable Court shall seem meet."

The case was argued at great length, before the Vice-Chancellors *Esten* and *Spragge*, by eminent counsel for all parties, and the Court in giving judgment, stated as follows :—

- "His Honor Mr. V. C. ESTEN said : After the best consideration we have been able, in so short a time, to give to this case, we have come to the conclusion that the Plaintiff's bill must be dismissed. It appears to us that the situation of the Preference Bondholders is clear—their position and their rights have been well defined by the Acts. His Lordship then referred to and quoted from 12 Vic., ch. 29, which gave the Crown the lien for interest ; 18 Vic., ch. 174, which extended that lien to principal as well as interest ; and 19 & 20 Vic., ch. 111, which authorized the issue of the Preference Bonds. Now, this last act, said his Lordship, authorized this Company to issue Preferential Bonds to the extent of two millions of pounds sterling. The holders of such bonds to have priority of claim therefor *over* the present first lien of the Province. As Bondholders merely, they have no lien, but by this enactment their lien (for they get the lien which the Government already possessed) attaches to the whole property of the Company, *present* and *future*, for Principal as well as Interest.
- "The rights of the Preference Bondholders thus created are not impaired by any subsequent enactments, and in my view the Act 22 Vic., ch. 52, rather confirms those rights.
- "Now the object of this suit is to restrain the Directors from paying the interest now due and unpaid on the Preference Bonds. Apart from the Acts of Parliament, this Court has no power to interfere. This Court must decide the questions which are raised upon these pleadings, according to the several Acts of Parliament which bear upon the subject ; and if we refer to those Acts, as we have done, we find it clearly expressed, THAT THE PREFERENCE BONDHOLDERS ARE IN THE POSITION OF PREFERRED CREDITORS, HAVING A LIEN UPON THE ROAD AND ALL THE WORKS AND PROPERTY OF THE RAILWAY. Then, again, on looking at those parts of the Acts which have been cited as describing the order of distribution of the earnings of the road, we do not find that in those Acts the rights

of the Bondholders are in any wise impaired. There is no doubt in my mind but that the Bondholders can institute a suit to restrain the Directors from applying the earnings of the road in any other way than in the order appointed by the Acts. This case is to be distinguished from *Corry v. Londonderry and Enniskillen Railway Company*.

"We cannot say how the past debts, due and unpaid, are to be met; but it is quite clear to me that a person having a lien is not obliged to submit to payments of past debts which the Directors have neglected to pay; and I consider that the Preference Bondholders of the Grand Trunk Railway Company are in that position.

"From the best consideration we have been able to give to the case, we have concluded that the Bill must be dismissed, and with costs.

"His Honor Mr. V. C. SPRAGGE regretted that he had not been able to give this case more consideration before rendering judgment. There were two branches in the case. (His Lordship then read the prayer of the Bill.) He was of opinion that it would be a breach of trust to apply the earnings in any way unauthorised by the Acts. He was in doubt as to the expenses of maintaining and working, and whether the Preference Bondholders were entitled to any thing more than the 'profits.' He thought that the statutes 12, 19, 20, and 22 Vic., should be read in *pari materia*. His lordship, however, desired to reserve his opinion on these points, as he had not sufficiently considered the effect of the numerous statutes which had been referred to, and he desired to look more fully into the case of *Corry v. Londonderry, &c.*; at any rate his leaning was in favour of the decision come to by his learned brother ESTEN, and he should agree *pro-forma*, that the bill be dismissed.

"His Honor Mr. V. C. SPRAGGE considered that the suit was not properly constituted."

Immediately after this decision had been rendered the Plaintiff's Bill was amended and a Second Preference Bondholder made a party thereto as co-Plaintiff.

The long vacation thereupon arrived, and it was found impossible to continue the litigation until it had expired.

Meantime, and before the Plaintiff's proceedings were proceeded with, two events occurred.

1st. In pursuance of a commission which had been directed by the Government to John Langton, J. Lewis Grant,

and Toussaint Trudeau, Esquires, to enquire into the management of the Grand Trunk Railway—the compliance of the Company with the conditions of the relief acts—the present financial position and generally into the mode of expense of maintaining and working the line, with the traffic arrangements connected therewith,—Messrs. Langton and Grant reported in execution of the said commission, and their report was published. To this report I shall make further reference hereafter.

2nd. The Select Committee of Share and Bondholders appointed at the meeting of the 2nd January, 1861, hereinbefore mentioned, on the 9th July, 1861, issued their second report. This Report, extending over 64 pages of printed matter has been published.

SCHEME OF RELIEF.

It is unnecessary to make a very particular reference to this Report, and I propose confining myself to the plan of re-organization and relief which the Committee recommended to all the claimants on the Company, the principles of which were.

(a) The raising in *England* of £500,000, to equip the line; (b) A scheme of general concession for the five years 1862–1866; (c) A plan of reformed and efficient management; and (d) a consolidation in the simplest form of all the Statutes and legal technicalities affecting the line.

The £500,000 to be raised in *England* for equipment to be called an “Equipment Mortgage,” the Debentures to be for 10 or 15 years; the interest to be payable half-yearly in *London* in sterling, and to be a charge *before* the leases, and next after working expenses.

The *Lease Rents* of the *Atlantic and St. Lawrence Line* to be reduced to 5 per cent., per annum, for the next five years.

The *Preference Bonds* (1st and 2nd) to be reduced to 5 per cent., per annum, for the 5 years, 1862–66, and the holders to have the option of converting the Bonds into “*First and Second priority Stock*,”—carrying votes—the priority of the *first* over the *second* being preserved.

The “*Ordinary Bonds*” to be converted into “*Perpetual Preference Stock*,” and carry votes.

The *Ordinary Bonds* to be reduced to 3 per cent., 1862–66, and after 1866 to bear 5 per cent. in *perpetuity*.

The £500,000 *Ordinary Bonds* (due 1862) to have priority over rest of *Ordinary Bonds*, and to bear interest at 4 per cent., 1862–66.

The dividend on “*Share Capital*” to be subject to same reductions, 1862–66. The legal domicile of the Company to be in *London*.

The Company in *Canada* to be managed by a “*Delegated*

Commission" of three persons—one to be nominated by the Canadian Government, one by the Preference Bondholders, and the other by the Preference and Ordinary Stockholders.

In consideration of these *concessions* the following application was made to the Canadian Government :

- " The Canadian Government to be applied to to advance at once to the Grand Trunk Company Province Bonds, bearing 5 per cent., per annum, payable in London, and for a term of say 25 or 30 years, the sum of one and a half millions sterling, such one and a half millions to be the capitalised payment for the 25 or 30 years of the total annual amounts to be due to the Company for postal and military subsidy, reasonable provision being of course made for the imposition of limits as regards the extent of service to be required by the Province.
- " Out of the proceeds of these one and a half millions the judgment and simple contract creditors to be paid a present cash dividend of not less than ten shillings in the pound on the *principal* of their debts, taking the balance of the debts in stock to rank after the 1st and 2nd Preference Bonds, and the £500,000 Bonds due in October, 1862."

The gentleman to whom was entrusted the important duty of carrying out these negotiations, Mr. Watkin the General Manager of the Manchester, Sheffield and Lincolnshire Railway, arrived in this Province in August last; the result of his labours is contained in his report of December 2, 1861, to which I shall hereafter have occasion to refer. He returned to England in October last. Meantime, as Mr. Watkin had to all appearances failed in the special object of his mission,—the proceedings in the suits of "*Morrison v The Grand Trunk Railway Company*," were proceeded with, in the month of October, in both Upper and Lower Canada.

JUDGMENT OBTAINED IN LOWER CANADA.

The suit in Lower Canada came on for argument before Mr. Justice Monk on the 23rd October, and occupied that and the two following days: the Honorables Messrs. Drummond and Dorion and Mr. A. Robertson appeared as counsel for the the Plaintiffs, and Messrs. Ritchie and Pominville for the Defendants. A full report of the arguments has already been printed and published. Judgment was rendered in writing on the 27th November, 1861, and it is certainly a very able document. It decrees to the Plaintiff the amount due to him for interest on his bonds, but did not give him a receiver or

sequestre, considering that by law and the constitution of the Court the judge had no power or authority to name and appoint a sequestre, and declaring that such an office, as appointed to take possession of and to manage Railway property was unknown to Lower Canadian law, and that the law relating to the sequestration of property had no application to the judicial sequestration of the property of bodies politic and corporate incorporated by Act of Parliament, unless by and with the consent of such bodies politic and corporate. The learned judge, however, pronounced upon the important question of the legal rights and priorities of the Preference Bondholders, and fully confirmed their contention. I extract from his judgment as follows :

" His Honor then alluded to the Statutes :—

" 16th Clause of the Act, 14th and 15th Victoria, cap. 73.

" 20th Section of the 18th Victoria, cap. 33. (Called the Amalgamation Act.)

" 2nd and 3rd Sections 18th Victoria, cap. 174.

" 2nd and 3rd Sections 19th and 20th Victoria, cap. 3.

" 4th Section 20th Victoria, cap. 11 ; whereby it is declared that the Province *foregoes all interest*, on its claim against the Company on certain conditions therein specified.

" Previous to the passing of this Act, the Province had, under the several guarantees set forth in the various Statutes above named, advanced to the defendants, the Company, £3,111,500 sterling for which the Crown undoubtedly held 'the first hypothec, mortgage and lien upon the road, tolls and property of the Company.' This is as I apprehend upon all viaducts, bridges, stations, houses, depots, and other works, machinery, and engines, vessels, carriages and things of every kind, which may be necessary or convenient to the working and using of any railway, 'and upon all tolls arising therefrom.'

" The hypothec, mortgage or lien of the Province extended to all these objects, and the Provincial Government held by express legislative enactment all these various securities for the payment of the different loans and advances which it had from time to time made to the Company. We may now enquire whether the first preference bondholders have a claim upon the 'Railway' as above defined, and also upon the tolls, superior to this hypothec and mortgage, privilege, or lien of the Province. I am of opinion that the question is susceptible of very little difficulty. The Act 19 and 20 Vic., Cap. 3. expressly enacts as before

stated 'that the said Company shall be authorised to issue Preferential Bonds, to the extent of £2,000,000 stg. The holders of such bonds to have priority of claim therefor over the present first lien of the Province.' In strict legal technicality, we may be at some loss to define or classify this substitution of one creditor in the rights of another. If desirous to find a name for it, we might have some doubts whether we should term it a surrender, transfer, assignment, renunciation, subrogation, or a simple postponement, but the language devoid of technical accuracy in this respect is, however, unambiguous, and to my mind, its effect is clearly beyond controversy, assuming that there is nothing in the form and language of these First Preference Bonds at variance with this enactment, and upon reference to the form of preferential Bond given in the Plaintiff's complaint, and its correctness is not disputed by the defendants,—the holder of this bond is entitled by law to *priority* over the existing *first lien* of the Province upon the undertaking of the Grand Trunk Railway Company of Canada *in respect of the debt of the Company to the Province*. I apprehend this Act (of 1856) places the first preference bondholders in precisely the same position in regard to the "railway" and its tolls and property, as that previously held by the Province. And I think that this privilege is applicable to both capital and interest. I cannot adopt the pretension that the Act of 1856 must be interpreted by reference to the 20 Vic. chap. 11 (Act of 1857). Circumstances may impair or diminish the security of the first preference bondholders, but nothing less than future legislative enactment, or their own acts, can defeat their priority of claim over the 'first lien' of the Province. I think the Act of 1856, if it means anything, means this. I am not of opinion that the Act of 1857, 4th clause, interferes in any way with the rights of the first preferential bondholders. By the Act of 1856, the Province in effect subrogated these bondholders in all the rights resulting from its 'first lien' to the extent of £2,000,000 stg. By the Act of 1857, it *foregoes*, on certain conditions, *all interest* on its claim of £3,111,500 stg., against the Company, until the *earnings and profits* of the Company shall be sufficient to defray certain charges therein specified, and among which charges is the interest on the first preferential bonds. If the Acts of 1856 and 1857 are to be interpreted together, the interpretation I think would be in favor of the first preferential bondholders.

"I do not therefore view this as a contingent or conditional right conceded to these bondholders, but a privilege, a 'first lien' as clear, absolute and indefeasible, as that of the Province previous to the Act of 1856. The Act of 1858 (22 Vict. chap. 52), amending other Acts, provides for the increase of the capital of the Company, by preferential bonds, which are deemed preferential under the Act of 1856, or by other bonds not preferential, or by mortgage, or by the issue of new shares. (Refers to sec 3.)"

"I am further of opinion that this Act does not affect in any way the rights of the first preferential bondholders."

PROCEEDINGS IN UPPER CANADA.

The proceedings in Upper Canada were also continued by the Plaintiffs giving a notice of motion on the 18th October, 1861, of an intended application to the Court for the appointment of a Receiver and Manager in terms of the prayer of their Bill. In support of such application, they proposed to rely upon their own affidavits verifying their Bill, and other mere formal matters; and the affidavits of their agent, Mr. WILL. PARE, and of THOS. C. KEEFER, Esq., Civil Engineer, who had, on behalf of the Plaintiffs, been engaged for the four months previous in examining into the condition of the road. On the 11th November they also gave notice of an intention to bring their cause on for hearing that their legal rights might be settled and determined by the decision of the Court.

From the affidavit of William Pare, of Dublin, Engineer, the Agent of the Plaintiffs, I extract the following:—

"27. I say, that from information I received from Joseph Elliott, the Secretary and Treasurer of the defendants, the Grand Trunk Railway Company of Canada, and also from the Honorable Mr. Ferrier, one of the Canadian Directors of the said Company, I have reason to believe, and I do verily believe, that the Company are paying general Creditors of the Company, and otherwise discharging by payment simple contract debts, which ought not to be paid before the interest is paid on the first and second Preference Bonds, and which debts, the said Mr. Ferrier informed me, they could not and would not have paid but for the eighth clause of an Act passed during the last Session of the Canadian Parliament, 24 Vic. chap. 17, and entitled, 'An Act to explain and amend the Railway Act;' and respecting which Act a petition has been presented to Her Majesty the Queen, and a Memorial to the Duke

of Newcastle, the Secretary of the Colonies, to disallow the said Act, and the same is now under consideration.

The affidavit made by Mr. KEEFER was as follows:—

- “ 1. That I have examined into the condition of the Grand Trunk Railway by going over the whole line, as well as by examining the Official Reports of the Directors and Officers of said Railway, and I believe that the renewals of the perishable materials on the said Railway have been so neglected, that for several years to come the necessary outlay for this purpose as well as for other works of repair and reconstruction, will absorb the whole of the net earnings which may be counted upon, so as to leave nothing to pay the rents due by the said Company, and that if said rents are paid these renewals must be provided for from sources other than the earnings of the road.
- “ 2. That unless a large sum of money is soon expended upon the renewals, the value of the Railway will be still more deteriorated, and the expense and risk of conducting its traffic increased.”

Every possible opposition was offered to the Plaintiff's proceedings. On the 31st October, 1861, the Defendants, the Judgment Creditors, and the Company cross-examined Mr. KEEFER, and the Judgment Creditors afterwards examined him as a witness on their behalf. His evidence is sufficiently important to be given *in extenso*. On cross-examination on his affidavit, he said:—

“I made an affidavit in this cause. In making the examination referred to in my affidavit I travelled on the cars on several occasions between June and September last. I went over the line for the purpose of making this examination; it was especial business, and I was paid for it by the Plaintiffs. I travelled as a passenger. I travelled in one of the passenger cars. I could see the condition of the track very well by riding over it in this way. So far as I derived information from personal inspection, it was derived in this way at intermediate places between stations; but at terminal points and stations I had opportunities of examining the track and establishments as much as I wished, and did so. My first trip was from Toronto to Montreal. I did not examine the line on that trip. I submitted a series of questions through Mr. Pare to the Secretary of the Company, and these questions were returned to me through Mr. Pare, answered by the Engineer, Trembicki. I look upon

the exhibit now produced and shewn to me, marked with the letters A. A. ; these are the answers of Mr. Trembicki to my questions, with the questions. My affidavit is founded on my personal inspection of the line—on the answers of Mr. Trembicki to my questions—the reports and accounts of the Company as published in London and Canada, the Reports of the Engineers of the Company, and information obtained from the Engineers of the Company. My examination was extended from Portland to Rivière du Loup, and to Detroit—in fact the whole line of the Company. My first trip to Montreal was in June; in July I went to Sarnia. I went on a Thursday, and remained till the following Monday—visiting Detroit in the mean time. The examination I made on the road to Sarnia, was by sitting at the rear seat of the rear car, and looking out as we proceeded, except at stations where I could get out and look around. This is the kind of examination I gave to all the road except at terminal points and stations. I know Mr. Shanly; he is a Civil Engineer; he is Traffic Superintendent of the whole line of the Grand Trunk Railroad.

“ *By Mr. Strong.*—With regard to the track itself, I consider my examination was sufficient in connection with the official information extant; but to have made my examination complete, it should have been extended to bridges, culverts and masonry. After obtaining the answer to my questions by Trembicki, I applied to the Secretary of the Company through Mr. Pare for facilities for inspecting the line: to be forwarded by a hand-car from structure to structure, and an order for the divisional Engineers to furnish me with any information I might require. At first I was informed that the Directors had resigned, and nothing could be done, and ultimately my application was refused. My affidavit is based upon the assumption that the bridges and other principal structures were in good order generally; but I saw some of the stone masonry in the Quebec and Richmond Division, and the brick work on the Central Division, were getting out of order and repair. My object in asking the hand-car was not for the purpose of examining the track, but for the examination of the structures, of which the Official Reports of the Company gave me no information.”

On being called as a witness on behalf of Messrs. Baring & Glyn, he said:—

“ The whole line was divided into five divisions, with a local

Engineer to each division. The duty of these Engineers is to superintend the condition of the road in the respects mentioned in my affidavit; they are nearly constantly on the road, and that is what they are employed for. I made a written Report to Mr. Pare of my examination, and delivered it to him. On some points these local Superintendents had better opportunities of judging of the condition of the road than I had, particularly as to the masonry and structures. If they had not reported fully on other points, they would have had better information on all. Mr. Blackwell is an Engineer, and I understand is Managing Director and Head of the Engineer Department. I understand that Trembicki performed some of the duties of Head Engineer; but others of the Local Engineers disputed his authority. If Mr. Shanly's attention had been called to the points alluded to in my affidavit, he would be capable of forming good judgment thereon, but his official duties would in my opinion preclude his going into it, unless his attention was specially called to it. Mr. Shanly is general Traffic Superintendent for the whole line, I believe. I think there must be one general Superintendent of the Traffic Department. I understand that the gross earnings of the line have lately reached upwards of ninety thousand dollars weekly. Any establishment like the Grand Trunk as a whole, requires one General Superintendent.

“ By Mr. Strong.—There would be no difficulty in dividing the line into portions or sections, and managing each separately. It would involve an increased expense; if there was the usual friendly interchange of traffic between the separate portions, it would practically make no difference; if worked as one line there would be no difference. If the trains of one section were allowed to run over the other section, it would be practically conducted as one line, and in that case there would be no difference in the expense, except so far as the employment of two Managers instead of one would increase the expense, and other office clerks, but it would not increase the working traffic expenses.

“ By Mr. McDonald.—I never have been a Manager on any Railway. The traffic on a road bringing in an income of upwards of ninety thousand dollars a week could not of course be managed so economically in two lines as in one line. I think if I owned the Grand Trunk Railway, I would cut it up into several pieces: I would cut off the two lines in the United

States at each end, if I could, because I think I could derive as much benefit by working in connection with them, and at less expense than at present, and because they are more dependent on the Canadian line than the Canadian line on them. The two lines are leased lines, which I would cut off. The line from Point Levi to Rivière du Loup could be worked as at present; all the remainder on the south side of the St. Lawrence could form a separate division. From Montreal to Sarnia, I think I would work as one line, except I could make a favorable arrangement with the Great Western, the Buffalo and Lake Huron and Northern Railways, and in that case I would drop the line west of St. Mary's, as part of the through line. The Victoria Bridge would belong to the Eastern Division. For through business the road could not be worked as I have just mentioned, as well as if conducted as one entire line. While I would cut off the leased lines and would maintain intact the section from Montreal to Lake Huron—if satisfactory traffic arrangements were secured for the portion east of Montreal for through business I see no objection to its being worked as a separate line. If I were compelled to keep the leased lines—that is the Portland and Detroit extensions—I would keep the whole as at present; but whether I would work the Detroit and Port Huron section or no would depend on its being able to pay working expenses,—unless compelled by the charter. There would be no difficulty in working a line producing a hundred thousand dollars per week in connection with other lines, provided proper traffic arrangements were made. If the local business on any one line were so great as to block up that line, then of course there would be no passage for through traffic; the greater amount of local traffic on any one line, the greater inconvenience it will occasion the through traffic, or the through traffic to it. I do not see that the greater amount of local traffic would increase the difficulty of managing in sections as compared with managing as one line, because if the local traffic on the line as it now is becomes sufficient to block it up, no through business can be done as in the other case. As I have already stated, I think it more advantageous or convenient to work such a line as this under one Superintendent.

“ By Mr. Strong.—I think the earnings of the road have not amounted to ninety thousand dollars a week until very lately; it is beyond the average receipts—that is—the harvest of the road; the receipts are higher at this

season than at any other. Supposing the line in Upper Canada and the line in Lower Canada to be two separate and distinct lines, the interchange of traffic would be eventually forced upon each other.

“ By Mr. McDonald.—The season continues good for the road until the freights become scarce in Montreal.

**EXHIBIT A A, REFERRED TO IN DEPOSITION OF
THOMAS C. KEEFER.**

ANSWERS TO QUESTIONS BY MR. PARE.

“ Question.—Length—What is the length of Main line and sidings?

“ Answer.—Length of Main line and Branch Sidings.

Main Line.	Length in Miles.	Sidings.
Portland Division.—Portland to Island Pond.....	149½	25½
Eastern Division.—Island Pond to Montreal* 144		
Point Levi to Richmond..... 95½		
	239½	27½
Rivière-du-Loup.—From Chaudière Junction to Rivière-du-Loup.	118½	3½
Central Division.—From Montreal to Toronto	333	29½
Western Division.—From Toronto to London and Sarnia.....	190½	22½
Detroit Extension.—Port Huron to Detroit Junction	59	8½
BRANCHES.		
Berlin Branch.—Portland division	1½	
Longueuil to Charone Junction.....	4	2½
Kingston Branch	2	
Total main line and branches.....	1097	120½
Total sidings	120	
* 17 Miles of this is in the State of Vermont.	Total track..	1217 miles.

“ Question.—Fencing—How much of each,—board, post and rail, snake or other kind? Is any portion of the line not fenced, and how much? What renewals are now required, and how soon must all be renewed? Please give the annual required expenditure till renewed.

“ Answer.—It is impossible for me to tell what length of board, post and rail or snake fence there is on the whole line, without having it all measured. There are about 10 miles of line on the Portland Division unfenced. The adjoining lands are wild, and as a rule, whenever they are reclaimed, notice is given to the Company to fence them off. Renewals extra to ordinary maintenance are only required on parts of the Central and

Eastern Division, and at the end of three years at furthest all their fencing must have been renewed. The annual expenditure for these renewals will be about \$24,000, and for the whole line during the years 1861-62-63-64, about \$30,000.

“ Question.—Ballast—What quantity on line? What is required to fully ballast, and what will be the cost, and at what rate may it be deferred?

“ Answer.—None is required except what is put on annually in the ordinary course of maintenance, excepting perhaps, on some sections of the Central Division, where from original deficiency, or bad quality, more than the average quantity is required. This, however, has always been and will continue to be included in the maintenance.

“ Question.—Bridges and Culverts—What is the condition of masonry and superstructure? What immediate outlay is required, and what annual average outlay for renewals will be needed till all are renewed?

“ Answer.—The bridges west of Montreal, and between Richmond and Rivière-du-Loup are all in such good condition, both as to masonry and superstructure, as to require no extraordinary repair. Between Montreal and Portland nearly all the old bridges have been renewed either in iron or with improved timber trusses, and although the cost of examining and maintaining them is greater than on the other sections of the Line, the work is done by the regular gang. Any trifling renewals that may from time to time be required may be fairly included in the maintenance. Several of the Culverts on the Central and Portland divisions are still in bad order, but the cost of *repairing* them is included in the maintenance. The only ones requiring renewal are on the latter section, these are mostly of timber, and the work is done by our regular Carpenters' Gang.

“ Question.—Ties—What number should now be replaced and at what cost? What is the condition of the remainder, and at what rate of annual expenditure must the renewal be made? And how soon must all be renewed?

“ Answer.—The number of Ties to be replaced this season is 184,000, their average cost is about 22 cents each, the condition of the remainder is satisfactory, and renewals at the same rate for the next four years will be sufficient, after that the Rivière-du-Loup line and the West of St. Mary's will require some ties to be renewed in addition to the number above stated.

“ Question.—Chairs—What is their state? To what extent,

and at what rate and cost must they be replaced?
Are more expensive ones needed?

*“ Answer.—*We are gradually doing away with the use of them, as we lay new fish plate Iron. The few that are renewed are of a superior quality and pattern.

*“ Question.—*Rails—How many of each pattern? How many have been taken up since the opening of line? How many re-rolled rails are laid? How long have they been down, and how do they wear? How many are now worn out, and at what rate and cost can renewals be deferred?

*“ Answer.—*On the 1st January, 1861, we had 161 miles of fish plate iron laid on the line, the remainder (929 miles of main line) is composed of both U and T iron, not fish plated. Since the commencement of 1858, up to the end of last year, about 95 miles have been taken up and relaid, irrespective of rails put in to replace broken ones. About 7,500 tons of re-rolled rails are laid, of which 4000 are in the Portland district. These do not wear well, and other arrangements have recently been made to improve the quality. The rails from the Toronto Mill have worn well. Some have been laid down since July 1860, and as yet none are worn out. Rail renewals will be required as follows: In 1861 about 72 miles; 1862, 90 miles; 1863, 110 miles; 1864 and 65, about 120; after that about 100 miles per annum.

*“ Question.—*Road Bed—What is state of side and cross drainage, and of cuttings and embankments? What expenditure is required to complete them? Are there any portions of the Line where extraordinary outlay or works of protection are needed? What will these cost, and how long may they be deferred?

*“ Answer.—*The side and cross drains are in fair average order as also the slopes of the cuttings and embankments, the cost of keeping them in order is borne by maintenance. There are portions of the line where extraordinary outlay for works of protection are required, viz.: near Port Hope and Port Union, where Lake Ontario has made great inroads into the land, separating it from the Railway. The cost of such works cannot be given but as a rough approximation, inasmuch as their extent much depends upon the action of the water. An expenditure this year of about \$10,000 will be ample to guard against any immediate danger.

A. L. TREMBICKI.

Montreal, 19th June, 1861.

Asst. Engineer.

The Company on the 21st November filed several affidavits—by Edward William Watkin, Esq., Superintending Commissioner of the Railway; he deposed as follows:

- " 1. Am Superintending Commissioner of the Grand Trunk Railway.
- " 2. I was nominated to that office on the unanimous recommendation of a Committee composed of representatives of the first and second and other Bondholders and also of Shareholders of the Grand Trunk Railway Company.
- " 3. That the said Committee was appointed by a Public Meeting of such holders, and its proceedings were confirmed by another public meeting largely attended by persons holding the said Bonds and Share securities held in London on the 16th July last.
- " 4. My said appointment was unanimously approved of by such Meeting, and I therefore represent officially the 1st and 2nd and other Bondholders as well as the Shareholders of the Grand Trunk Railway Company.
- " 5. I believe I represent the interests of a large majority of the 1st and 2nd Preferential Bondholders in both amount and number.
- " 6. Acting in the interests of such Bondholders and of the Company at large, I have taken the needful steps to protect all their interests which are now placed in the position of greater safety to secure which they they sent me to Canada.
- " 7. I leave for England on the 23rd inst., to report my proceedings to the Bond and Shareholders and to ask for their further instructions, and I return to Canada as as soon as I have received such instructions, which which will probably be about January next.
- " 8. I have this day learnt at 10 o'clock, P.M., that notice of a motion has been given at Toronto in this cause at the instigation of parties who, I believe, do not represent the general body of the Bondholders to appoint a Receiver over the portion of the Railway in Upper Canada.
- " 9. I believe such an appointment to be at this juncture wholly unnecessary and likely to lead to the destruction of the credit of the Company and to the stoppage of the Railway as a means of through communication during the ensuing winter.
- " 10. I believe such stoppage would be destructive to the interests especially of the first Preference Bondholders, and that the vast majority of them on learning of this proceeding will disavow and disapprove the same."

REMARKS ON THE EVIDENCE.

Mr. Elliot, Mr. Shanly, and others also made affidavits.

Mr. Elliot said : The road is of such a character that it must necessarily be conducted in all its parts like a single machine under one management, and its Rolling Stock must necessarily be, and is in fact, continually passing and re-passing from and to Sarnia and Portland.

The *Answer* to which might have been readily given as follows : At the present moment the Great Western are sending *their own rolling stock* over the Grand Trunk Railway from Detroit to Portland. Also, before the amalgamation—trains from Montreal ran to Portland through *four* separate jurisdictions.

The narrow guage lines between Montreal and Boston and New York send and have sent both passenger and freight cars between these points, over several distinct railways and through several distinct jurisdictions ; and the narrow guage lines terminating in Detroit, bring their cars from Illinois through Indiana, Ohio, and Michigan to Port Huron, over a leased section of the Grand Trunk ; and did the guage permit these loaded cars would no doubt pass through to Canada when desired to New England, Montreal or Toronto.

In short, affidavits could be filed to shew that the existence of different corporations and jurisdictions is no impediment to railway traffic between New York and Chicago, and farther when desirable.

Lastly, the appointment of a Receiver and Manager, acting under the Court, over any section of the Grand Trunk, need not "necessarily," to use Mr. Elliot's words, conflict with the road being worked "like a single machine."

Mr. Shanly said: the roadway and its appurtenances are in good and efficient repair.

The *Answer* to this would be : It is only in a state of "repair," it has never been completed. Mr. Shanly does not allude to the question of the renewals or rebut any affidavits filed by the Plaintiffs, which had no doubt been seen by him.

Again, he says "none of the above has been allowed to run down or get out of repair." This is intended, no doubt, to apply to the Rolling Stock, and not to the roadway and its appurtenances, as it is notorious that the means of the Company have been insufficient to do anything like justice to the line. Elliot's Evidence, sec. 9, shews that the company has been compelled to pay debts to prevent forfeitures, &c., and that they have lately had no other resources than the earnings, so that the renewals have necessarily been neglected.

The leading wants of the road are :

1. The road bed is not completed as to slopes, drainage and width of embankments.

2. The Ballast is insufficient in quantity and quality.
3. The Sleepers are do. do. do.
4. The Rails are bad in quality and much worn.
5. The Chairs are too small and should be replaced.

This of course does not apply to the *whole* of the roadbed, ballast, sleepers, rails, and chairs.

On all these items a large outlay must be made, and cannot be longer postponed; and none of the nett earnings can be applied to other sources without injustice to these demands for years to come.

It is to be observed that, although Mr. Shanly in his affidavit alludes to the \$96,000 weekly receipts, his ability with proper appliances to have earned \$20,000 more, his refusal of freight offered at fair prices for want of means of transport, &c., he does not assert that the nett earnings *for the year* will meet the rents and renewals, nor does he rebut our affidavit in this respect.* He knew that in October, 1860, the receipts ran up to somewhere about \$90,000 a week, but that the Company could not get through the winter without aid from the Government, and a failure to pay on all sides.

On the 23rd November, the Judgment Creditors and the Company cross-examined Mr. Pare. The plaintiffs were desirous and deemed it necessary to cross-examine Mr. Shanly on his affidavit; yet three weeks elapsed before the defendants, the Company, produced him for examination, notwithstanding the efforts which were made by the plaintiffs to procure his attendance in a shorter time. Application was then made for a special day to hear the motions, (consolidated) and the earliest appointment that could be obtained was for the 15th January, 1862.

Meantime important proceedings were going on in England.

PROCEEDINGS IN ENGLAND--DECEMBER, 1861.

On the 5th December, 1861, the report made by Mr. Watkin was promulgated, and on the 24th Dec., a meeting of the Share and Bond holders, postponed from the 18th inst., was held at the London Tavern, Mr. T. BARING, M.P., in the chair. The proceedings of this meeting have been fully reported. It is necessary that I should reproduce the observations of the Chairman and Mr. Morris, which I do from a report in the *Daily News* of the 25th Dec., as follows:—

* Neither does he endorse Mr. Elliot's opinion that a Receiver on one portion would be disastrous, nor say it would be impossible to work the line in sections. He says it is "absolutely necessary that it should be under one executive control," which evidently refers to the through traffic, and this might be done with a Receiver and Manager on any portion; the necessary agreements as to the through traffic between the several sections forming a through line, constitutes "one executive control."

"The report and accounts previously issued and circulated, having been taken as read,

"The CHAIRMAN said the proprietors were aware that that was the half-yearly meeting, convened to receive the report of the directors, and the suggestions laid down in Mr. Watkin's report. They must, he was sure, all feel in the present critical state of America the desirableness of being represented there by a gentleman of so much knowledge, judgment, and discretion as Mr. Watkin. (Cheers.) They must also be sensible of the need of harmony for the purpose of improving the position and promoting the interests alike of bondholders and shareholders. He concluded by moving the following resolution:—'That the report of the directors, the accounts, and the report of Mr. Watkin, be received and adopted; that Mr. Watkin be thanked for his great services; that the board do appoint an agent to proceed to Canada to continue negotiations with the government, and to carry out the re-organization of the line, and the other arrangements recommended in Mr. Watkin's report; that for this purpose such agent be empowered to represent all classes with the fullest powers, and that the government and legislature of Canada be impressed with the importance of prompt action in dealing with the question of the postal subsidy and its capitalization as the only practical means of relieving this concern from its financial embarrassments.'

"Mr. MORRIS seconded the resolution, and observed that he, as representing a large amount if not a large number of the preference bondholders, had had several interviews with Mr. Watkin, having felt that his report could not be adopted without explanation, and the result was that an understanding had been come to between himself and Mr. Watkin, by which he would be able to carry out the negotiations and organize the concern, so as to obtain the largest amount of net income, the point in which they were all most deeply interested, but that understanding was coupled with the condition that nothing should be done by legislation in Canada or otherwise to affect the peculiar position of the preference bondholders. There was one material consideration which must not be lost sight of, and that was that the leased lines must be confined within the four corners of their respective leases. The net revenue must not go into the pockets of any one class. But the first thing was to clear themselves of their present difficulties. They could do nothing while a heavy debt was hanging

upon them, and he believed that in the case of the Northern Railway the mere fact of clearing off the debt so as to enable them to buy everything with ready money and at the first market had made a difference of 20 per cent. Until they cleared off the floating debt they could not realize the full amount of net profits. He thought Mr. Watkin should be trusted with the carrying out of the proposed scheme, because if there was a divided authority it was obvious Mr. Watkin would be unable to effect anything."

The whole proceedings of the meeting were characterised by an evident intention to leave untried no effort for the restoration of the Company to a position of financial prosperity. It was admitted that the present was no time for sectional difficulties or party feeling, but that every particular interest must in every sense give way to the common benefit of the entire body of creditors. The meeting felt that, at a moment when it was necessary to make a sustained effort to obtain the assistance of the Canadian Legislature it would not be seemly to shew themselves at variance with each other, and that now there was every reason to hope that success would be the result of plans which had been dictated by the prudence of Mr. Watkin, if carried out by the unanimous vote of the proprietary. Of course the meeting was unanimous, all being actuated by the same hope.

I have now, I believe, fairly stated the case of the Preference Bondholders, historically, from the month of October, 1860, to the present time. My next, and more difficult duty, will be to draw such conclusions therefrom as the facts justify and as are necessary to defend *that* policy with which I have been identified, and with the carrying out of which I have been actively engaged, in the interest of the Preference Bondholders.

POSITION OF PARTIES.

When the Plaintiff's commenced their litigation they very properly defined the position of the Preference Bondholders. We are not in the position of parties who want to get anything—we merely want to *hold* what we have.

"The Preference Bondholders, if rightly advised, have already a first charge over everything. They therefore *can gain nothing* by legislation; while the Judgment Creditors, on the other hand, have *everything to gain and nothing to lose*, by legislative interference."

The Preference Bondholders very justly started with the proposition, "that they cared nothing about government relief, unless it could be obtained upon easy terms."

In their published "case," they repudiate any intention of making any claim upon the Government for pecuniary assistance. They relied upon their Bonds—they relied upon the priority of claim given to them by the act of 1856, over *all the property* of the Company—over *the present first lien of the Province*. Doubts had been suggested as to whether they had such a charge created in their favour by the act of 1856. If there existed any legal defect, (the intention being clear,) then they claimed government assistance to remedy the defect. They say:

"The Government and people of Canada not only therefore cannot dispute, but are bound to support, the Preference Bondholders' claim. If the Government Act of 1856 should (although we do not admit that it does) fail to give effect to what was the admitted *intention*, the Preference Bondholders would have a right to call on the Government to remedy the defect."

Evidently the course the Preference Bondholders pursued, was plain and intelligible and having regard to the facts which are herein stated, was just and reasonable. What is that course?

"The Judgment Creditors having resorted to legal proceedings, the Preference Bondholders are compelled, *in self-defence*, to take steps to protect the rolling stock from seizure.

I am satisfied, however, that from the first, the Judgment Creditors felt the weakness of their position, *legally*, and were anxious to and did urge the *morality* of their claim, and relied on their power of *obstruction* for ultimate success. This position of the Judgment creditors has been approved by the course they have pursued from the first.

If the act of 1856 did not give us a full and complete lien and charge over *everything* belonging to the Company, present and future, until we were paid, then it ought to have done so; and the Province is morally bound to set right any looseness or ambiguity in the wording of that act to give effect to the clear intention—an intention which is confirmed by subsequent legislation defining the order of applying the net earnings.

This was done by the Imperial Parliament in the case of the "*Red Sea Telegraph*," where a doubt was expressed whether the wording of an Act of Parliament giving a government guarantee, was sufficiently extensive. Having regard to the failure of the concern, the Imperial Government felt bound to bring in a declaratory act—and in the discussions thereupon, it was put simply on the ground of *good faith* on the part of the Government—to carry out what was the clear intention, and every attempt to mix up and discuss other matters with that point, was opposed by the Government. The argument was, the

guarantee was supposed to be absolute, the public subscribed their money upon the faith of its being so, and it is simply now a question of *good faith* on the part of the Government which ought not and cannot take advantage of any technical defect. The reasons which applied to *that* case, are much stronger when applied to *this*, both as regards the Province, the Company, and the *unsecured* Creditors of the Company.

The Company, that is the Directors and Shareholders, and various other classes at home, other than the Preference Bondholders, imagined that they could procure relief from the Government, and they petitioned therefore during the last session of parliament. No relief was promised. The Committee of the 2nd Jany, as I have before stated, recommended all parties to join together in a petition to the Parliament of Canada, setting out their case, and concluding with a prayer for *relief* in general terms, and there is no doubt that, having regard to the case, and reasons in support thereof,—it was well conceived. It was assumed at the time that the government would be powerless to help them. Had the government come forward with a measure of relief, *without prejudice to the claims of the Preference Bondholders*, they would have no doubt facilitated that object. No act was brought in. The Petition was ordered to lie upon the table. The advisers of the Preference Bondholders however, having in view that

“The interests of the Preference Bondholders and of the ordinary Bond and Shareholders were identical, in keeping the road open and developing its resources, while the necessary effect of enforcing the claim of the Judgment Creditors by seizure of the rolling stock would be to stop the road, and so do irreparable damage to all classes interested, whether as Shareholders or Bondholders,”

endeavoured to procure the passing of the Permissive Bill I have before referred to; and Mr. William Pare, their agent, presented to the House a petition, having previously submitted his proposed Bill to members of the Government. This petition is an important document, it ably describes the position of the Preference Bondholders, *then* and *now*, for their position is unchanged. It clearly defines the position of parties *then* and *now*, which is alike unchanged. It sought relief—actual relief—without invoking sectional opposition—without the necessity of any pecuniary advance from the Province. Subsequent events, produced by Mr. Watkin's Mission and Report, and the action of the meeting of the 24th December, have apparently induced a different conclusion, but have in nowise altered the position of parties

The petition of Mr. William Pare was as follows :—

*To the Legislative Assembly of the Province of Canada in
Parliament assembled :*

The Humble Petition of the undersigned William Pare, of London, England, as Agent of Preference Bondholders of the "Grand Trunk Railway Company of Canada," residing within the United Kingdom of Great Britain and Ireland ;

SHEWETH :—

- " 1. That the affairs of the Grand Trunk Railway Company of Canada have been in an embarrassed condition for some time past ; nearly, if not the whole of the payments, as they have become exigible, have been left unpaid, and payment thereof indefinitely postponed.
- " 2. That the parties for whom your Petitioner is acting,—the interest on whose Bonds, in common with that of all the other Bonded debts, is in arrear,—caused a notice to be served upon the Directors of the Company, insisting that all payments, after working expenses, shall be made in the order directed in the several Acts of Parliament under which the Company is authorised ; whereupon the Directors passed a resolution of their body stating that if such notice be acted upon, it "will in a very short time lead to the seizure—in the United States more particularly—of the Locomotive and other rolling Stock of the Company, and will inevitably be followed by *the entire stoppage of the road.*"
- " 3. That Messrs. Baring, Brothers, & Co., and Messrs. Glyn, Mills, & Co., have obtained a judgment against the Company for a sum of about £800,000 sterling, and that executions may at any time be issued, and the rolling stock of the road seized and sold, and thereby an immediate and entire stoppage of the road would follow.
- " 4. That the Judgment Creditors having resorted to legal proceedings as in last paragraph stated, the Preference Bondholders represented by your petitioner were compelled on behalf of themselves and "all other the holders of the first Preferential Bonds of the Grand Trunk Railway Company of Canada, issued pursuant to the provisions of an Act passed in the 19th and 20th years of Her Majesty's reign, intituled : *An Act to grant additional aid to the Grand Trunk Railway Company of Canada,*" in self defence to commence proceedings in the Courts of Upper and Lower Canada, to protect the Rolling Stock from seizure, and to determine the rights and priorities of the respective parties interested.

- "5. That inasmuch as the right of appeal to Her Majesty's Privy Council will undoubtedly be resorted to, there is reason to believe that the litigation may be prolonged to a period fatal to the interest of all those classes in order of priority behind that class in the interest of which your Petitioner appears.
- "6. That this delay will likewise occasion great inconvenience and loss to the merchants, freighters and others, users of the Railway, by the inability of the Company, as declared by its Directors in a recent report—"overwhelmed by an enormous floating debt, and met at every moment by discredit and litigation,"—to provide facilities such as are required for carrying on the traffic offered to the Road.
- "7. That in proof of this it is within the knowledge of your petitioner, that large quantities of produce from the Western States have been, in the ordinary course of business, and since his arrival in this country, offered to the Managers of the Company, who have declared their inability to carry the same for want of increased rolling stock and other appliances.
- "8. That the Company is largely indebted on simple contract claims within the Province, which it has no present means to discharge, and many of which claims are now in judgment, and numerous other such claimants are already threatening suit which, if carried to execution, would give power to seize the Rolling Stock and thereby effect a stoppage of the road.
- "9. That if restrained, without other means being provided for the settlement of their claims, great inconvenience and positive loss must thereupon ensue to them.
- "10. That your Honourable House has upon its table a Petition—presented at the commencement of the Session—from "Share and Bondholders of the Company, residing in Great Britain and Ireland," praying—
 'That fully reserving all the legal rights pertaining to the several kinds of securities they hold, your Petitioners, therefore, humbly pray your Honourable House to afford to your Petitioners such speedy and effectual relief, as in the wisdom of your Honourable House may be best adapted to the merits of the case of your Petitioners, and may be most consistent with the rights of all parties.'
- "11. That your Petitioner has been waiting to see whether any action would be taken by the Government, or otherwise, in consequence of said Petition.
- "12. That your Petitioner having learned that a Bill was in preparation, intended, in certain contingencies, to

affect the Grand Trunk Railway Company, felt it desirable to wait and see the provisions of such intended Bill, before taking steps to submit to your Honorable House according to instructions, a Bill, having for its object the preservation of the property of the Railway pending the suits which are before the Tribunals, as already mentioned in paragraph 4, and enabling funds to be raised to extricate the concern from its present difficulties, and put the line in a condition to meet the present and growing wants of the community.

- " 13. That your Petitioner has subsequently learned that it is not intended to proceed with the Bill herein first alluded to, and he is now therefore desirous to lay the last named Bill before your Honorable House, but is informed that this cannot now be done without the special permission of your Honorable House, inasmuch as the time has expired when, under the Standing Orders, such Bill could be introduced in the ordinary course.
- " 14. That said last mentioned Bill is permissive in its character, and does not seek to compromise, or in any way affect, prejudicially, the interests of any parties having property in the said railway, and could only take effect after consent of said parties had and obtained.
- " 15. That much loss and injury will be sustained by the parties for whom your Petitioner is acting, in common with all others interested in the property of said railway, by the postponement of any relief in the premises until the meeting of another Parliament.
- " 16. That your Petitioner humbly submits that the prayer of the petition already on the table of your Honorable House and referred to in paragraph 10, affords a reason for the action of the legislature this session—and that the Bill herein referred to, with such alterations and amendments as to your Honourable House may seem fit, will entirely conform to the prayer of the said petition.

" Your Petitioner therefore humbly prays your Honorable House, that the proposed Bill may be allowed to be submitted to the consideration of your Honorable House, or that such other relief may be afforded in the premises as in the wisdom of your Honorable House may seem meet.

And your petitioner will ever pray, &c. &c.

(Signed,)

WILL: PARE.

I think it beyond a doubt, that it was, and still is, the interest of the Canadian government to facilitate the claims of the Preference Bondholders; for if the present Judgment Creditors can seize, any other Creditor can obtain judgment and do likewise—so that the road never could be worked, and legislative interference would be necessary to *protect the property*. The Government would not interfere to exclude one Judgment Creditor more than another; indeed, the interests of the Government and the Preference Bondholders are identical. The Government lien, although postponed, has not been put an end to, and the Attorney General might at once file an information to restrain the Judgment Creditors by virtue of the Government lien. If this had been done, it would have been a protection to the Preference Bondholders. It was not done, and the Preference Bondholders essayed to protect themselves; and there is no doubt that the best thing for all parties, would have been to have the Preference Bondholders' rights upheld, for they alone could protect the property for the benefit of all interests, according to their legal priorities.

What, I say, is the position of the Government? As regards legal rights it is clear that the Government lien *does* remain—but that it ranks *after* the Preference Bonds (1st and 2nd), as a charge on the property, and after all the other interests as a charge upon income. As between the 1st and 2nd Preference Bondholders and the Government, the latter stands in the position of 2nd mortgagees, and can only exercise any legal rights—*subject* to the prior mortgage of the Preference Bondholders. It follows then that if the Government put in force the machinery of the Courts of Law, it can in no way interfere with the rights of the Preference Bondholders.

The Preference Bondholders having delayed their proceedings in the expectation that Mr. Watkin would in the autumn of last year give some positive evidence of the success of his mission, and which expectation was in nowise realized, resumed their legal proceedings in the manner and form already mentioned, and with a view to their *protection* they applied for a Receiver and Manager. They had faith in appealing to a Court of Law; they believed that a Court of Law was more likely to be influenced by reason and strict views of right, and in obtaining the appointment of a Receiver and Manager, they might then have come to the Legislature during the ensuing session, for a short Act extending the appointment to both sections of the Province, and thereby removing the legal difficulties elaborated by Judge Monk when he gave his judgment on the case heard in Lower Canada in October last. These Bondholders were pursuing a strictly honest course: they applied *first* to the Courts to obtain the appointment of an officer to protect the property, pending the adjudication upon legal rights. They would then have applied to Parliament to extend the

powers of the Receiver and Manager for the better and more efficient working of the line.

This application in Upper Canada, and the final hearing of the cause there, was just anticipated by the announcement of the arrangements come to by all parties at the meeting of the 24th December, held in London, England. Such is the position of parties.

POSITION OF THE ROAD.

I cannot explain this more satisfactorily than by referring to the evidence which I have already set out given by Mr. KEEFER, in the suit of "Morrison v. The Grand Trunk Railway Company." That gentleman, however, made a professional report on the line, also referred to in his examination, which shews that although over a million and a half sterling have been expended by the Company in extra works, &c., since they leased, purchased, or took off the contractor's hands the different sections of the road, and another million sterling must be provided for completion, renewals, and equipment-fund, to be expended within the next four years. Also, that the rents and interest on mortgages payable by the Company, exclusive of all Bond interest or interest on floating debt, will absorb any probable net revenue of the road left after payment of working expenses; so that provision for the renewals (which, from the embarrassment of the Company, have been allowed to fall greatly in arrear) cannot be depended upon out of the income without an extraordinary increase of the net earnings, which, in the present condition of the line, is almost impracticable.

The chief deficiencies are the want of ballast, of a sufficient number of sound sleepers, and proper chairs to preserve the iron, and of a better quality in the rails themselves, which, by the policy of re-rolling adopted by the Company, are doomed to retain too much of the original bad quality of the old rails, until, by repeated re-rolling, the same can be expelled. The Company would save between \$100,000 and \$200,000 per annum by selling their old rails and purchasing new ones of better material, instead of re-rolling under their present contract, and thus retaining the bad iron.

THE LEASED LINES.

One is quite sick of the nonsense so frequently repeated in the history of the Grand Trunk—about the importance of the leased lines—as if the Grand Trunk was not more important to these extensions, than the extensions are to the Grand Trunk. They could *not* work without the Grand Trunk, and the very best thing that could happened to the Grand Trunk,

would be to limit the leased lines to their own earnings. The leased lines might either work under a separate management, or under the Grand Trunk management. I should say that they had better work under their own management, because it would be lessening the enormous amount of responsibility of working such a length of railway as is now comprised under the head of "The Grand Trunk Railway Company of Canada." If the attention of the managing body was concentrated to a smaller length of Railway—the Grand Trunk proper—and each of the leased lines had an independent management looking after them, each would feed the other, whereas now the whole is collapsed together.

A few such transactions as the Detroit and Sarnia lease, and the security of the Preference Bondholders is practically destroyed.

What said Mr. Conybeare on this question? His communication upon the history of this lease transaction is highly important. The case is stated in a most lucid manner by this gentleman as follows:—

THE GRAND TRUNK AND THE DETROIT AND SARNIA LEASE.

- "1. The Government Commissioners characterize this as the most "improvident agreement ever made by the Grand Trunk with other Companies," and one of the most difficult and important questions under the proposed Scheme will be to determine how to deal with it. To aid the Share and Bondholders in arriving at a safe conclusion, it is essential they should know the facts. The object of the following statement is to narrate them for their information.
- "2. The Detroit Line was projected in 1858 by an independent Company, of which the principal London Directors of the Grand Trunk were Directors. The Shares were offered to the Shareholders and Bondholders of the Grand Trunk, but were not taken up by them. Nevertheless arrangements were entered into by its promoters for making the Line, and Mr. Blackwell in his Report of 30th September, 1858, announced the fact, and stated that it had been secured for the Grand Trunk by an arrangement whereby the Detroit Line was to receive Fifty per Cent. on its *gross* traffic.
- "3. Nothing more was said about this Line until the Report of the 27th March, 1860, when it was stated that the Detroit and Sarnia Railway was 'proposed to be 'Leased to the Grand Trunk for 999 Years, at such a 'proportion of the receipts earned on that Railway as 'will secure a Dividend to the Shareholders of that 'Company of *not less than* Six per Cent., with a

'contingent increase up to Eight per Cent. on the
'Share Capital of the Company.'

"4. This Report was issued a day or two before the Meeting in London of the 30th of March, 1860. At that Meeting, Mr. Baring, the Chairman, said, referring to this Lease, that this 'is a Line which in an estimate
'will *pay of itself*, if disconnected and severed from
'the Grand Trunk.' He adds, 'those who are at
'present interested in the Branch undertaking, are not
'desirous of abandoning their own interest, because
'they believe it to be a good Line.'

"5. One is curious to know *who* were the disinterested persons who were thus giving up what they considered such a good thing; for certainly they very much misled the Directors of the Grand Trunk. Whether the latter are free from blame, and whether the former are guilty of such misrepresentation as will vitiate the Lease, will better appear when we get at all the facts; and it will be a most important ingredient in the case if it should turn out that the London Directors, who recommended the Lease to their own Shareholders, were themselves principally or largely interested in the Detroit Line. In that case, Lessor and Lessee would be substantially the same parties, and any negotiations would have been an idle form; but although I have heard all this suggested I have no evidence on the subject, and I hope therefore it will not turn out to be as has been represented. My reference to this part of the subject will at all events suggest the necessity for a full explanation, and I think it only fair to the Directors to give them this opportunity of making such explanation

"6. It appears from a Postscript to the Report of the 27th March, 1860, that the London Directors had at that date *actually received* (although they state there was not time to print them before the Meeting on the 30th) accounts shewing that the Detroit Line *had been* worked at a great loss up to the 31st December, 1859. It is but reasonable also to assume that the London Directors were acquainted by the Weekly Returns with the actual traffic on that Line, between the 31st December, 1859, and up to say the beginning of March, 1860.

"7. It was not long after the date of the March Meeting that the London Directors required from the Manager in Canada some explanation as to "the very poor returns on this line," and accordingly Mr. Shanly made a Special Report thereon, dated 18th August,

1860, now *for the first time* published in the Appendix, p. 140, to the Government Commissioners' Report.

- "8. From this Report it appears that the Gross Traffic for the half year ending 30th June, 1860, had been \$28 per mile per week—the working expenses being \$40, and the Rent under the intended lease \$53 per mile per week; and Mr. Shanly shews conclusively that the line is not likely for some time to come to pay working expenses, and he therefore advises that the proposed Lease should not be carried into effect. Yet the lease was executed on the 11th October, 1860, Mr. Blackwell signing it as President of the Detroit Line (he being also Vice-President of the Grand Trunk), and the Hon. John Ross signing it as President of the Grand Trunk.
- "9. Not only is this Lease 'improvident' as binding the Grand Trunk to pay, *for the future*, rent which the Line cannot earn, but it also throws upon the Grand Trunk *back Rent* in the shape of interest on the Capital of the Detroit Company, although not a word was said about this in the only communication ever made to the Grand Trunk Shareholders in the March Report.
- "10. That the fifty per cent. arrangement was *in actual operation* up to the 1st December, 1859, appears from the accounts which the London Directors had, as before stated, received from Canada prior to, but which were not printed till after the 30th of March Meeting. (See the last page of the accounts, with circular of the 11th of April, 1860.) No explanation was given at that Meeting why the fifty per cent. arrangement was changed to a *fixed Rent Lease*. The former was not even referred to, either in the Report, or in Mr. Baring's speech.
- "11. Prior to the Lease the Grand Trunk appears to have made large advances to the Detroit Line, which were wiped out by the back Rent.
- "12. Under the fifty per cent. arrangement the Detroit Line was bound, as it seems, to find its own rolling stock, of which it was most deficient at the date of the Lease; and the Grand Trunk had, in addition to its other obligations, the duty cast upon it by the Lease of supplying this deficiency, which it has not yet been able to do for want of means.
- "13. The actual Rent fixed by the Lease is, for a portion of the time eight per cent. on the whole capital, viz., £450,000—afterwards, eight per cent. on one half the capital, and six per cent. increasable to eight per cent. on the other half. This Rent is to be paid

wholly without reference to the actual receipts of the Line. The only part of it dependent on the receipts is the increase on the second half from six per cent. to eight per cent. Is the statement in the March Report as to this, a fair one?

- " 14. The fixed Rent both for the back and the future the Grand Trunk bound itself to pay by the Lease at a time when it was paying nothing to its own Shareholders, nor even to its bonded or other creditors. Both the Government Commissioners in their Report, and Mr. Giles, the Engineer, (see Report of January meeting) state that the cost of this Line is most excessive.

15. All the facts which have since come out as to this Lease were easily obtainable and ought to have been obtained before the London Directors took upon themselves to recommend a lease at the March Meeting. In ordinary life, no one would think of taking a farm for twenty-one years (much less a lease like this for 999 years, which is tantamount to a purchase) without a survey and written report, especially if the party or parties negotiating for the Lease were acting on behalf of other and distant parties. Did the London Directors obtain any Report on the Line before recommending the Lease? Where is the "estimate" referred to by Mr. Baring in his speech?

- " 16. At the end of April, 1860, the London Directors issued an advertisement, soliciting subscriptions for the Second Preference Bonds, in which it was stated that £13 15s. a mile a week would pay the rent on the Atlantic and St. Lawrence and the interest on the First and Second Preference Bonds. No reference was made to the rent of the Detroit Line, and the omission as I have been informed is justified by the Directors on the ground that there was *then* no lease. If this was a sufficient justification in April and May when those advertisements were issued, was there anything actually binding in law between the two Companies, at the date of MR. SHANLY'S Report in August, which rendered it impossible for the proposed Lease to be "retreated from," as advised by MR. SHANLY in that Report?

17. Now the specific complaints against the London Directors are—(1.) That they never ought to have recommended a Lease on such terms; or at all events, that they should not have done so without a full communication of all the facts. (2.) That the Lease which had not been signed at the date of MR. SHANLY'S Report of August, ought not to have been proceeded

with after that Report. (3.) That that Report was kept by the Directors from their Shareholders. (4.) That at the date of the Lease the Grand Trunk was in a confessedly bankrupt state, having made default in payment of interest on its bond debt, both ordinary and preferential, and the two principal London Directors having prior to that date obtained judgments against the Company for nearly a million sterling.

"18. The "Reference" proposed by Clause 9 of the Scheme is vague and far too general. If any reference is made, it must extend to an inquiry into *all* the arrangements between the two Companies, the Grand Trunk protesting against the existing Lease being in any way recognized as valid, until we have the whole of the facts before us, and have come to a decision thereon.

"19. Mr. HENRY CHAPMAN'S "Charges," and the Government Commissioners' Report, show how this Lease is viewed in Canada, and any attempt to gloss it over will convince the people of Canada that there is to be no *bona fide* change in the constitution and management of the Company. They will look with suspicion upon the "Scheme," and all chance of further aid will be lost. This transaction must not be classed with those "*past*" ones which there seems so much desire not to enquire into, and an enquiry into which would not lead to like practical results. The necessity for an enquiry is admitted by the Scheme, and the only question is whether it shall be partial or complete. Indeed an arrangement with reference to this Line must be an essential part of the proposed reorganisation as it affects the future working of the Line, and also the *annual charges on the Grand Trunk*.

"20. I merely desire an investigation into the facts—with those facts before them in the form of a Report on the whole case, it will be for the Share and Bondholders to form their judgment, and to decide what is proper to be done, both as to the past and the future.

J. C. CONYBEARE,

A holder of First and Second Preference Bonds, and likewise the Seven per Cent. and Ordinary Bonds.

COULSDON GRANGE, near CROYDON,
15th July, 1861.

POSITION OF THE COMPANY FINANCIALLY CONSIDERED.

FINANCIAL OUTLINE.

Leases.	Annual charge.	Due.
Atlantic and St. Lawrence—6 per cent. on £1,226,075	£73,564	£147,128
Detroit and Sarnia—8 per cent. on £450,000	36,000	72,000
Interest on Preference Bonds—6 per cent., due 31st Dec., 1861	120,000 [Jan.'62]	180,000
Second Preference Bonds—6 per cent., due 1st April, 1879	66,690 [Oct.'61]	£1,767
Ordinary 6 per cent. Bonds—due July, 1878, and July, 1879	138,840 [Jan.'62]	193,377
Ordinary 7 per cent. Bonds—due July, 1878, and July, 1879	6,300	" 9,450
7 per cent. Bonds, £500,000—due Oct. 1862, Oct. 1867, and Oct. 1872	05,000	" 156,563
Annual charge	£546,394	
Arrears, 1st Jan., 1862	£750,285

FLOATING DEBT.

Company's Statement, under oath, £2,196,500	
Judgment—Baring & Co.....	396,476
" Glyn & Co.....	407,051
" Peto & Co.....	340,176
	£3,350,203
Renewals and Equipments, per Mr. Keefer's report, estimated at }	1,000,000
	£4,350,203
Amount required by the Company on the } 1st January, 1862, stg..... }	£5,100,488

This is wholly exclusive of Interest on the over-due payments

Exclusive also of the Interest and Rents now accruing for the current year

Exclusive also of £500,000 of 7 per cent. Bonds due in October, 1862

**THE FINANCIAL POSITION OF THE COMPANY,
AS MODIFIED BY THE PROPOSED SCHEME.**

Amount to be raised for Equipment, to be called the "Equipment Mortgage"	£500,000
Amount to be raised by capitalization of the Postal Subsidy	1,500,000
	<hr/> £2,000,000 <hr/>

Amount now due by Company, as per former statement	£4,100,488
Exclusive of interest thereon	
	<hr/>

Amounts payable under terms of proposed arrange- ment scheme	
Rents and Interest, as per former state- ment	750,285
These payments are to be reduced from 1862 to 1866 <i>only</i> , as hereinafter shewn	
Judgment and Simple Contract Debts, 10 per cent in the £ on <i>principal</i> ..	1,675,101
	<hr/> £2,425,386 <hr/>

Amount payable in cash, if proposed scheme is carried out	£2,425,386
Amount to be received from capitalization of Postal Subsidy	1,500,000
	<hr/> Immediate <i>Deficiency</i> £925,386 <hr/>

To this add insufficiency of Equipment, as per Mr. Keefer's report, which estimates the sum re- quired at £1,000,000, instead of £500,000, as to be provided for by Equipment Mortgage	500,000
	<hr/>

ACTUAL DEFICIENCY..... £1,425,386

The simple contract debts, *exclusive of liabilities in Canada*, were in December, 1860, estimated at £2,165,654, vide Report of 17th December, 1860. Now let reference be made to the amount yearly required to meet the payments on rents and Bond Interest, and Interest on Equipment Mortgage :—

Interest on Equipment mortgage on £500,000 @ 6 per cent	£30,000
Atlantic and St. Lawrence rent 5 per cent on £1,226,075	61,304
Detroit and Sarnia rent 5 per cent. on £450,000 ..	22,500
Interest on 1st Preferential Bonds £2,000,000 @ 5 per cent.	100,000
Interest on 2nd Preferential Bonds £1,111,500 @ 5 per cent.	55,575
Ordinary Bonds £3,403,987 @ 3 per cent	102,119
Do. due 1862	500,000
@ 4 per cent.	20,000
	<hr/> 520,000

Amount payable by Company during year 1862 } after payment of working expenses	£891,498
Add to this the balance of floating debt £1,675,101 which is to be funded and to rank after 1st and 2nd Preference Bonds, and after £500,000 Bonds due in 1862, bearing interest @ 3 per cent	
	50,253

Total amount payable, 1862	941,751
For 1863	441,751
For 1864	441,751
For 1865	441,751
For 1866	441,751

The deficiency on 1st January, 1862, as I have before stated, is £1,425,386

Payments for 1862	941,751
	<hr/> £2,367,137

Exclusive of cash payments to be made under the proposed scheme, and assuming the Company can renew the £500,000 bonds due in October, 1862,—the cash required for this year, after payment of working expenses, is £1,867,137

The gross receipts for 1860, were \$3,322,274
The working expenses (84 per cent.) and rents and mortgage interest for 1860, were \$3,395,158

Bondholders may be unable to obtain interest, and other Creditors may be powerless, but there is no escape from the payment of rents and mortgage interest, if insisted on; and if the revenue be insufficient for these, what is the prospect of the ordinary Bondholder, or even the Preference Bondholder, before whom the spectre of Renewals rises up?

THE IMPOSSIBILITY OF THE PROVINCE GRANTING ANY ADEQUATE RELIEF IN THE PREMISES.

I propose to deal with this proposition under the following heads:

- 1st. From its own financial position.
- 2nd. From the feeling of the Country as expressed at the polls, at the period of the recent general election.
- 3rd. From the inability of the Company to give any security whatever for the due performance of those services for which the capitalization of the postal subsidy, is an anticipated payment for 30 years, and also from the absence of any guarantee that another demand for relief would not immediately follow, (and having regard to what has already been shewn, this is not problematical,) and that thereby the connection between the Government and the Company would be perpetuated, to the injury of the Province, its credit and its population.
- 4th. From the conviction that the Company can only be adequately relieved from its present embarrassments by its Corporate decrease.
- 5th. From the necessary consequence which must follow, if relief be extended to this Railway, as proposed, that it must, in common fairness, be alike extended by the Province to other Provincial Railways, Undertakings, and Municipalities, which are in common with the Grand Trunk Company labouring under severe financial embarrassments.

Much might be urged in support of these propositions. I shall content myself, however, with a very few remarks, as the propositions themselves will necessarily form the chief topic of discussion in the columns of the press:—

1. FROM ITS OWN FINANCIAL POSITION.

The advance in payment of the postal services for 25 or 30 years, would appear to be £1,500,000 of Provincial Bonds; but these Bonds are to bear interest, which, as well as principal, is to be paid by the Province. The principal and interest of the advance is to be considered as an equivalent to payment. The Government is to give Provincial Bonds for £1,500,000, to bear interest @ 6 per cent.; and which principal and interest are to be taken as payment for postal services rendered by the Company for 30 years, in which period the Bonds are to mature. The Company will not require any sinking fund to meet these Bonds: they are to be paid by the Province. It is not a loan to be repaid by the Company; but an advance by the Province in payment of postal services to be rendered

during a period of 30 years ; so that the advance to the Company actually made will stand thus :—

Bonds to be given	£1,500,000
Interest thereon for 30 years at 6 per cent	2,700,000
<hr/>	
If for 30 years, at 6 per cent	£4,200,000
Or	\$21,000,000
<hr/>	
If for 25 years	£3,750,000
Or	\$18,750,000

Now it is quite clear that in the present state of the finances of the Province, it cannot afford to pay \$450,000 interest and 1.30th of the principal, \$350,000—a total sum of \$700,000 a year for the conveyance of the mails.

From estimates already extant, it appears that the difference between the revenue and expenditure of the Province for 1857, '58, '59, '60, was, about twelve millions of dollars.

The actual debt of the Province, inclusive of every engagement direct and indirect, in the hands of the public, for which its credit and revenues are pledged, according to the last statement of the Minister of Finance, is \$58,292,469*

The revenue of 1860, supplied only about two-thirds of the sum expended. The deficiency had been as great for several previous years. The great probability is that, apart from any Grand Trunk pecuniary relief, it will continue.

If the average deficit of the last four years be maintained (and the assumption of new burdens is not likely to diminish it), the interest on the Postal Subsidy Bonds will be *borrowed money*, and, with the principal, will, at the end of thirty years, represent an increase of the Public Debt to the extent of \$21,000,000.

The embarrassments of the Municipalities—the Public Buildings at Ottawa—the Interest upon an increasing Public Debt—and, more than all, the organization of a Volunteer Force and the defences of the Province, will at least absorb any increase of revenue—or any reduction of expenditure—or both—that may be effected ; so that so long as the Provincial Credit is maintained, it can hardly be expected that the average deficiency of the four years ending with 1860 will be reduced. In that case the Debt, when the Postal Subsidy Bonds fall due, will be something as follows :

The present Debt being—say.....	\$59,000,000
Postal Subsidy Bonds.....	7,500,000
Average annual increase of Debt in 30 } years, at \$3,000,000 per annum.. }	90,000,000

\$156,500,000

* The Opposition papers estimate the public debt as high as \$70,000,000.

In the face of this almost inevitable prospect, it is hopeless to expect the Canadians to squander their resources on a particular railway already more favoured—only because more importunate—than others, especially since there is an absence of all necessity for it

It is not necessary, because the Canadian portion of the road is now well able, by its earnings, to pay working expenses, and gradually to fully complete and equip itself, which is as much as can be expected, or ever should have been expected, from it. It is not, therefore, in a condition in which the Province would be warranted in *borrowing*,—to lend to an insolvent Company,—chiefly for the purpose of enabling them to purchase a temporary peace, and to pay six and eight per cent. interest upon the cost of leased lines (*in a foreign country*, and which may at any day be employed as engines of war against Canada), which in the one case does not earn four per cent., and in the other does not pay even working expenses.

2. FROM THE FEELING OF THE COUNTRY AS EXPRESSED AT THE POLLS AT THE PERIOD OF THE RECENT GENERAL ELECTION.

The expression of feeling at the last general election against granting further aid to the Grand Trunk was almost universal. In the addresses of candidates (particularly new candidates) to their constituencies, the following paragraph was almost universally adopted:—"I object to further aid to the Grand Trunk Railway, and I desire to see all connection severed between it and the Government." In the speeches of the various candidates to the electors, even stronger language is used—language probably less guarded:—"I also strongly oppose any further grant of public money to the Grand Trunk;" "I will oppose any pecuniary aid whatever;" "Let the Bondholders take the road." Even the Government organ, the *Quebec Chronicle*, shortly before the elections, wrote as follows:—"The Grand Trunk Railway will never be in the position it ought to occupy, until its real owners, who after all are the Bondholders, have the management of it;" and in referring to the scheme of relief sought for last session, and the absence of unanimity in Grand Trunk councils, it proceeds:—"Perhaps the hope, cherished even against hope, that the Government of Canada would again act the benevolent and charitable has been the real cause of this supineness, and the man for the times will more readily be found, now it is understood, in England as well as here, that the Bondholders, like other mortals, must help themselves."—*Quebec "Morning Chronicle," 4th May, 1861.*

It is not my intention to travel through the files of the various Canadian journals of all shades of politics, which have one and all spoken out upon this question during the past year.

Neither shall I refer to the addresses of the various candidates for Legislative honours; but it is evident that the Press and the addresses will lend every confirmation to the proposition that the unanimous feeling of the people of Canada is against the granting of any pecuniary relief by the Province to this Railway.

3. FROM THE INABILITY OF THE COMPANY TO GIVE ANY SECURITY WHATEVER FOR THE DUE PERFORMANCE OF THOSE SERVICES FOR WHICH THE CAPITALIZATION OF THE POSTAL SUBSIDY IS AN ANTICIPATED PAYMENT FOR THIRTY YEARS, AND ALSO FROM THE ABSENCE OF ANY GUARANTEE THAT ANOTHER DEMAND FOR RELIEF WOULD NOT IMMEDIATELY FOLLOW—(AND HAVING REGARD TO WHAT HAS ALREADY BEEN SHEWN, THIS IS NOT PROBLEMATICAL)—AND THAT THEREBY THE CONNECTION BETWEEN THE GOVERNMENT AND THE COMPANY WOULD BE PERPETUATED, TO THE INJURY OF THE PROVINCE, ITS CREDIT, AND ITS POPULATION.

Mr. Watkin, in his recent report, section 8, bearing upon this proposition, makes the following statement:—"I was able, I believe, to convince the Government, after devoting some time to a personal examination of the Railway and its position, that, physically and pecuniarily, the material guarantees for the performance of this service were really beyond cavil."

It is to be regretted that Mr. Watkin did not offer some evidence other than a mere general dictum of his own, as to where the material guarantees existed. The means resorted to by him to obtain the necessary evidence, viz., "a personal examination of the Railway *and its position*," are clearly insufficient data. The Railway *quod* a Railway might be able to perform the service; its position may be such as justify the belief that it could be performed; but the question is whether a Company which now is, and beyond doubt for some years to come, must continue to be in hopelessly insolvent circumstances, can possibly offer any satisfactory guarantee to the Province for the due performance of such a contract.

4. FROM THE CONVICTION THAT THE COMPANY CAN ONLY BE ADEQUATELY RELIEVED BY ITS CORPORATE DECEASE.

The Report of the Commissioners to which I have before referred, has an important reference to this proposition. The Commissioners deal with the question of the Grand Trunk undertaking in its entirety. On page 61 of that Report, I find the following:—"But supposing all these improvements to be

introduced—granting that the trade had *every* accomodation which it could reasonably expect—that the traffic arrangements were such as to insure punctuality, and that the freight were carried at remunerative rates, still there would be one measure more necessary *before* the Grand Trunk could take its place as a solvent undertaking. It is absolutely essential that the nominal capital should be reduced. The liability of the Company for interest and rents exclusive of share capital, at the date June 30, 1860, is given in the appendix (p. 51), and was within a trifle of \$3,000,000, and if additional capital were raised more fully to to equip the road, the liability would exceed this sum ; but the balance of revenue account, according even to the Company's own way of shewing it, was not more than \$1,472,000. We have thus an *annual* charge upon revenue of double the amount of the *aggregate net earnings during the eight years* the road has been open. It is impossible that any increase of traffic, or any improvement of management, can make head against such a load of debt.

It is impossible to be blind to the fact, that nothing but the sacrifice of a large part of the capital invested can justify a hope of saving any of the remainder. *In the present position of the Company, no external aid can avail anything. Even if it were possible to obtain means to effect a temporary relief, it would only the more speedily, and the more certainly, bring on the final crisis."*

Such was the expressed opinion of the Government Commissioners.

5. FROM THE NECESSARY CONSEQUENCES WHICH MUST FOLLOW IF RELIEF BE EXTENDED TO THIS RAILWAY AS PROPOSED; THAT IT MUST, IN COMMON FAIRNESS, BE ALIKE EXTENDED BY THE PROVINCE TO OTHER PROVINCIAL RAILWAYS, UNDERTAKINGS, AND MUNICIPALITIES, WHICH ARE, IN COMMON WITH THE GRAND TRUNK COMPANY, LABOURING UNDER SEVERE FINANCIAL EMBARRASMENTS.

This proposition is self-evident. Many Municipalities are fearfully embarrassed. They owe about \$8,000,000; and many are being sued by the Crown at this moment, to enforce payment, which cannot but bring about a large amount of local and direct municipal taxation.

As to the other Railways,—the Buffalo & Lake Huron and the Great Western,—enough is already known in England and in this Province as to these lines, and as to the present condition of their affairs, to render any particular reference thereto unnecessary.

THE NORTHERN RAILWAY.

By an act of the Provincial Parliament 22 Vic. ch. 89, (1859) "An act relating to *The Northern Railway Company of Canada*," Parliament dealt with the embarrassments of a Provincial Railroad, whose position then was analogous to the present condition of the Grand Trunk. The Northern Railway was much embarrassed financially, the Preference Bondholders had commenced suits upon their Bonds—the road was in bad condition—its credit was impaired—its development wholly impossible, and its extrication beset with difficulty. All interests essayed to obtain Parliamentary aid, and failed. Unitedly they procured the passage of an act, the result of which has been in a couple of years to restore the credit of the Company, and to conduce to its material prosperity.

This act, shortly stated, is as follows:—

"1. Northern Railway of Canada vested in the Crown for the following purposes:—

1. Governor in Council may cause the Railway to be put in repairs at a cost not exceeding \$60,000.
2. Railway may be worked either by intervention of the Company, or by other persons.
3. Railway may be sold on or after 1st August, 1859, and proceeds of sale distributed among creditors in proper order of priority.
4. Railway may be bought by the Province.

"2. Governor in Council may treat and agree with the Company or Bondholders for the transfer of the Railway, stock, plant, rights, and privileges to the Company or to the Bondholders, and allow new capital to be raised by Preferential Bonds, to be applied in the repair and improvement of the Railway and stock.

"Order in Council for transfer to be binding on all persons having any interest in the present capital of the Company, whether as Stockholders or Bondholders. The effect of such order being to vest the property and rights in the persons mentioned in such order of Council.

"Priority of lien and dividends may be granted by the Governor in Council for new capital, and subscribers therefor to vote.

"Order of Council to provide for matters incidental to the Railway and its management."

What is there to prevent such an arrangement being come to with respect to the Grand Trunk? The peculiar position of the Judgment Creditors, who, as Financial Agents of this Province, are enabled to exercise more than ordinary influence over provincial legislation, has, no doubt, been the reason why

an exceptional policy is followed in the case of the Grand Trunk Railway. It should not be concealed that there exists a strong conviction in Canada, that the Judgment Creditors have derived advantages from their control over the provincial finances which should go far to neutralize their advances to the Railway, and that on this account other sufferers have stronger claims upon contributions to be made by the Province.

CONCLUSION.

During the past twelve months the people of Canada have been generally aware that efforts would be made to obtain pecuniary aid for this Company, from the Province. The appeal made by the Shareholders during the last session was unsuccessful, and as far as the tone of the press, of all shades of politics, and the addresses of new members to their constituents at the recent elections, can be regarded as an index of the public sentiment, there seems to be little doubt that *any* appeal for aid will be regarded with disfavour; I might go further and say it would be strenuously opposed. The expression of this opinion does not emanate from faction or party, it is not an expression of triumph that having got the road they seek to avoid paying for it. Opposition to pecuniary aid from the province is not rested on any technical ground,—the Colony does not seek to avoid the responsibility of any engagement to which it is not bound by any strictly legal form. The functions of the Canadian community are not limited to the securing the railway first, and then laughing at the simplicity of those who embarked their means in the undertaking. The Colony sympathises with those widows and orphans, those small capitalists, and large ones also, who have invested their means in the undertaking. The Colonists assume a higher ground and rest their case on anything but slender premises.

It has never been pretended that any *legal* responsibility can be urged by the claimants for relief, and they are content to rest their case on the strong *moral* claim they have upon the Province. At the same time, and with the same breath, they urge that in Canada, moral claims are not understood.

It appears to be forgotten that there are two sides to the question, and that Canada has also a moral claim to urge on behalf of her own people. It is urged that if Canada refuses the sacrifice now claimed at her hands, "it will not require much foresight to perceive that she will have taken a downward step, to be recovered only by prolonged and costly sacrifices." It may be also urged with equal force, that should she make the sacrifice she may be plunging herself into ruin and inevitable and continuing Bankruptcy:—and my reasons before mentioned shewing why she cannot make the advance go far to establish such a proposition. To whom would the

advance go, if made? To the Judgment Creditors, Messrs. Baring and Glyn and Messrs. Peto and Co., the contractors, in greater part. The poor shareholders would not benefit a whit. The Bondholders might get a year's interest, and that is all. This is a strong fact for the consideration of those English people who are contending that pecuniary aid from the Province is their just right.

The Legislature of this Province granted a specific amount of aid to the Railway, and sanctioned, through a Committee of the House, the contract made in which the enterprise was to be undertaken; but neither the Legislature nor the Government, as such, mere parties to the prospectus, the concoction of which took place in London, under both English and Canadian auspices, and the fallacious promises of which have constituted the basis of the "moral claims" put forth. At the same time it is but just to admit, that the Government of this Province assumed the responsibility of a supervision of the expenditure; and in so far as the present embarrassments of the Company are produced or increased by its failure faithfully to discharge that duty, it is answerable. And if any of its members or officials are responsible for the many frauds which have been practised upon the Stockholders, and which have done so much to exhaust the capital and destroy the usefulness of the road, as well as its ability to make a return, a moral responsibility has been incurred. The Preference Bondholders may also justly complain that their money was obtained under a species of false pretences, as the report of the Government Commissioners has shewn that systematic concealment of the true financial condition of the Company has been practised; and it may reasonably be expected, that from the connection between the Government and the Company, as well as from the control supposed to be exercised over all corporations,—and especially railways,—under the Railway Inspection Act, that such practices would not have been allowed.

I am satisfied that an advance by the Province will not influence the estimation in which for the future Canada will be held in England. If an English merchant ascertains that his customer is trading largely beyond his capital, if a body of merchants on 'Change, are well aware that the imports of a Colony largely exceed its exports, if financiers are convinced that the debts of the borrower far exceed his available resources and his means of payment, we well know the consequences which ensue, and if a bankrupt company endeavour to bolster up their already lost credit by means which—although they may tide it over for a season—cannot re-establish its credit, we know the English maxim is "wind it up." If a property is mortgaged far beyond its value, we know that the prudent course of the mortgagees is to realize, as their chances of ultimate payment are diminished by the accumulations of

interest—by the depreciation of the security—by a host of contingencies, with which every Mortgagee and business man is well acquainted. When a property is borne down by these calamities, it can only be re-established, or developed, or improved in other hands—and when freed from the incubus of heavy debt which had impeded its re-establishment to credit, its development, and its improvement.

Since Dec., 1859, the interest has not been paid on the three millions of share capital, and since June 1860 the payment of all interest has been suspended on the seven millions of bonds of various orders of priority. I have already shewn what the floating debt amounts to—the Company being overwhelmed with debt, wholly destitute of credit, lapsed into utter insolvency and confusion—it is sought to shape this chaos into order, to restore this insolvent wreck to commercial prosperity, not by means usually resorted to in such cases, but by a fruitless application for an advance, which, even should it be obtained, would amount to about one-third of the sum actually required for the purpose.

If we assume that the scheme proposed is adopted, after a very short time, if not in its inception—if my figures are correct—the Grand Trunk must relapse into continued pecuniary embarrassment. I have said that the Preference Bondholders cannot be benefitted by its passage, it appears to me, however, that they must be seriously prejudiced when as first mortgagees they have, in order to save their securities, to take possession of and work the road, and as that event may soon happen,—should it take place, they will find themselves bereft of a most important source of income. According to estimates prepared for the passage of the proposed relief scheme, a sum of \$350,000, and $\frac{1}{30}$ of £1,500,000, equal to \$250,000, or a total of \$700,000 yearly for the carriage of the mails, will have been already paid in advance for 30 years by the Province. They will find that they are bound to this contract, they will have to carry the mails without remuneration for many years, and from the anticipated payment will not have derived any other advantage than *perhaps* the payment of a year's interest on their bonds—

The principal of the new postal bonds is £1,500,000

The interest for thirty years..... £2,700,000

£4,200,000

And the consideration for this advance, services to be rendered by the Company for a like period. Assuming the Company fail, and the Preference Bondholders are compelled to take possession to save themselves, it is in effect putting before their claim £4,200,000 ; it matters not whether this sum is placed before them as *cash* advanced, or in *services to be ren-*

dered, because for the latter they should, when in possession, receive so much *cash*. The service must be performed without payment, therefore to such an extent it is to them a positive loss.

If, then, the scheme of arrangement—the capitalization of the Postal Subsidy—as proposed at the meeting held in London, in July last, and confirmed for adoption in December, “as the only practical means of relieving this concern from its financial embarrassments,” cannot and will not be adopted by the Legislature of this Province, it seems clear that the question of the Postal Subsidy can only be presented in *one* other form, viz., that the Legislature, acting upon the willingness of the Government to arbitrate as to the amount to be paid, may sanction a contract for some amount to be paid for Postal Service annually, into the hands of Trustees, during a term of years, for the purpose of providing the interest at least on a new issue of Bonds by the Company. In other words, that the Company, under their corporate powers, might issue new Bonds, the interest on which should be paid by the Province, out of the amount which the Province may agree to pay for Postal Services,—the Province capitalizing that sum to meet the interest yearly.

The law of 1849, which only extended the Provincial guarantee *to the interest* on railway loans, proved inoperative; and it is therefore probable that any amount to be annually paid by the Province must be sufficient to form a Sinking Fund for, as well to meet the interest on, the new issue of the Company's Bonds. This necessity calls for a more liberal subsidy or a reduced issue of Bonds.

The present Postmaster General, when addressing, at Peterboro', the electors, at the recent Trent election,* referring to the question of payment to the Grand Trunk for Postal Services, said, “A bargain had been made between the Government, through Mr. Morris, and the Company, that the latter should be paid \$110 per mile for Postal Services. When I took office, I considered that \$70 a mile was sufficient; and the Company had never been paid more than \$70 since Mr. Postmaster General Morris' time. The Company claimed the difference, and it was a just one—it was certainly not a trumped up one; but I nevertheless insisted that the country could not afford to pay \$110 a mile. I had fixed the amount at \$70, because I honestly believed that the country could not afford to pay more. I always resisted the payment of the \$40 a mile extra, from the time I reduced it. It was under these circumstances that the Company offered Preferential Bonds, and good security, for a temporary loan of \$245,000, to be paid by the Post Office Services Fund.”

* *Vide Toronto Leader* of August 23rd, 1861.

The Government Commissioners' Report, page 57, states the facts with reference to the allowance to the Company for Postal Services, and they agree with the statement made by the Hon. Sidney Smith. It further appears, from this report, that the United States Government pays the Grand Trunk, on the Atlantic district, \$100, and on the Detroit district, \$43 per mile.

The average rate paid in the United States, in 1860, was \$172.24 per mile. But the railways in the States carry more mails, and perform "extra" services: they deliver the mails at the post offices at the terminal stations, and at all way offices not more than a quarter of a mile from the railway; whilst in Canada, the post office receives the mails on the platform.

From these authorities, it is clear that the amount to be paid cannot be expected to exceed \$100 a mile. What amount would this produce as a source of yearly revenue for Postal Services?

The length of the road is 1097 miles.

Deduct from this—

Portland division	149 $\frac{1}{4}$
Detroit extension	59
Eastern division, in the State of Vermont.....	17
Branches	7 $\frac{1}{4}$
	<hr/> 232 $\frac{1}{2}$

Total number of miles..... 865 $\frac{1}{2}$
Producing a revenue of \$86,500

When we remember that the Company only run one through train in the twenty-four hours; that the Riviere du Loup Extension has only one train daily; and that between Toronto and Sarnia there is another railway to compete for the through mails,—it is evident that no extra trains (except in connection with the arrival of an ocean steamer) are run for the mails. That in fact, if no mails were carried, the trains would run as they now do, for passenger accommodation only: and fixing the value of the service performed by the rates paid by the Express Companies for a greater amount of tonnage carried, the annual value of the Mail Service would not exceed the above estimate. The Company performs the business of the Express Companies for about £7,000 or £8,000 per annum; and allowing for the difference in the services, three times this amount should be the full value for the mails.

Again, the Legislature will be deterred from assenting to any excessive mileage allowance to the Grand Trunk Railway for postal purposes, by the consideration that there are about one thousand miles of railway in Canada belonging to other Companies, to whom a proportionate subsidy must be given.

To meet the exigences of the arrangement scheme already referred to, the Company require—

Yearly \$700,000

And this, I have shewn, is insufficient to meet its present requirements; and here we have an amount of only

86,500

Leaving the deficiency \$613,500

A yearly payment of interest equal to \$86,500, would only meet the interest payable on a capital of under £300,000. This would not pay the interest on the proposed "Equipment" Mortgage of £500,000; and rents, interest on bonds, and floating debt, would remain as they are at present—unsatisfied. We may therefore dismiss this alternative proposition without further consideration.

Lastly. The Shareholders can never hope for any return unless placed on a par with their creditors; but as the proprietors of the charter, and the real managers of the property, they have a position perhaps more profitable to the controlling members than that of any other class. Although railways may be unable to pay interest or dividend,—the disbursement of the whole receipts in working expenses, renewals, extensions, &c., gives rise to profitable English commissions on iron, locomotives, &c.; and the contracts for sleepers, fuel, oil, &c., afford a local patronage available for political purposes. Again: the power of appointing the three thousand employés may compensate many shareholders for the loss of dividends,—as friends and relations may thus be provided for, or political support be purchased. The largest shareholder—if he exercises his power—may make more out of a bankrupt railway than the highest dividend; and thus a powerful combination of shareholders, high-salaried officials, supernumerary employés, and politicians, may be expected to unite, promise and attempt impossibilities to maintain the *status quo*, and prolong their official existence at the expense of the Bondholders and other creditors of this unfortunate undertaking. It is from this interest the Preference Bondholders have most to fear.

It is not my duty to say more than I have already urged on this question. Upon all important questions of finance,—whether as pertaining to "home" or abroad,—Englishmen generally possess sound and enlarged views, and in their hands I may safely leave the subject.